TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 123.

KNOXVILLE WATER COMPANY, APPELLANT,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF KNOXVILLE ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

FILED NOVEMBER 17, 1904.

(19,533.)

(19,533.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 123.

KNOXVILLE WATER COMPANY, APPELLANT,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF KNOXVILLE ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

INDEX.

	Original.	Print.
Caption	*a*	1
Prosecution bond	1	1
Bill of complaint	2	2
Exhibit No. 1—Certified copy of charter of Knoxville Water Company	45	27
No. 2—Certified copy of amendment to charter of Knoxville Water Company	52	32
No. 3—Articles of agreement for the construction of water works for the city of Knoxville, July 1, 1882	55	34
Bond of Knoxville Water Company, filed July 1, 1882	66	41
No. 4—Proceedings of the Board of Mayor and Aldermen of City of Knoxville, February 9, 1888	68	42
No. 5—An ordinance to provide for a supply of water to the town of North Knoxville and its inhabitants and to authorize the making of a contract for the same with Wheeler & Parks, April 18, 1891	72	44

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 3, 1905.

	Original.	Print
Exhibit No. 6—Charter of the Lonsdale-Beaumont Water Company	87	53
No. 7—Ordinance to provide for a supply of water to West Knoxville, &c., and contracting with Lonsdale-Beaumont Water Co., September 17, 1892	95	58
No. 8—Ordinance authorizing and giving the consent and approval of the city of Knoxville to the consolidation of the Knoxville Water Co. and the Lonsdale-Beaumont Water Co., &c., October 20, 1899	109	66
Acceptance by the Lonsdale-Beaumont Water Company	113	69
Acceptance by the Knoxville Water Company	114	70
No. 9—Chapter 12, house bill No. 28, An act to authorize the city of Knoxville to issue bonds to purchase and acquire the plant and property of the Knoxville Water Co., &c., approved February 2, 1903	115	71
No. 10—Chapter 153, senate bill No. 257, An act to authorize the city of Knoxville to own and operate a system of water works and to issue bonds for that purpose, and to amend house bill No. 28, &c., approved April 3, 1903	122	74
Motion for a preliminary injunction	132	80
Restraining order	133	81
Chancery subpœna	134	82
Order allowing amendment to bill	136	83
Demurrer	138	84
Order allowing amendment to bill (second)	140	85
Opinion of the court dismissing bill	141	86
Decree dismissing bill, etc.	153	94
Petition for appeal and allowance of same	155	95
Assignment of errors	156	96
Appeal bond	161	99
Order granting appeal	162	100
Opinion overruling motion to continue restraining order pending appeal	163	100
Order overruling motion to continue restraining order	164	100
Citation and service	165	101
Clerk's certificate	165½	101

a In the United States Circuit Court for the Northern Division of the Eastern District of Tennessee.

KNOXVILLE WATER COMPANY, Appellant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF KNOXVILLE ET AL., Appellees.

Messrs. Shields, Cates and Mouncastle, Knoxville, Tennessee, solicitors for appellant.

J. W. Culton, Esq., R. H. Sansom, Esq., and John W. Green, Esq. (all of Knoxville, Tennessee), solicitors for appellees.

All Proceedings Had before the Honorable C. D. Clark, United States District Judge for the Eastern and Middle Districts of Tennessee.

1 KNOXVILLE WATER COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF KNOXVILLE ET AL.

Prosecution Bond.

United States Circuit Court at Knoxville, Tennessee.

Know all men by these presents that we, Knoxville Water Company, as principal, and the United States Fidelity & Guaranty Company, of Baltimore, Maryland, as surety, are held and firmly bound unto the Mayor and Aldermen of the City of Knoxville, and the Water Works Commission of the City of Knoxville in the penal sum of two hundred and fifty dollars, to be void on condition that said Knoxville Water Company shall prosecute with effect the suit which it has commenced in the United States circuit court at Knoxville, Tennessee, against said Mayor and Aldermen of the City of Knoxville, *et al.*, or pay all the costs and damages incident on failure thereof, or which may be adjudged against us.

This 5th day of August 1904.

KNOXVILLE WATER COMPANY,
By CHARLES T. CATES, JR., Att'y.
[SEAL.]
UNITED STATES FIDELITY & GUARANTY CO.,
By MAYNARD & DAVIES,
Agents & Att'ys in Fact.

Endorsed: No. 1382. Knoxville Water Co. *vs.* Mayor & Aldermen of the City of Knoxville, *et al.* Prosecution bond. Filed August 5th, 1904, J. T. Carter, deputy clerk.

2 Original and Injunction Bill.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

KNOXVILLE WATER COMPANY, Plaintiff,
vs.
MAYOR AND ALDERMEN OF THE CITY OF KNOXVILLE, Defendant.

To the honorable the judges of the circuit court of the United States in and for the northern division of the eastern district of Tennessee:

The Knoxville Water Company, a citizen of the State of Tennessee, and a corporation chartered and organized under the laws of the State of Tennessee, brings this, its bill of complaint, against the Mayor and Aldermen of the City of Knoxville, Tennessee, a municipal corporation, chartered under the laws of the State of Tennessee, and located in Knox county, Tennessee, in the northern division of the eastern district of Tennessee, W. L. Russell, F. J. Callen, E. G. Oates, J. Allen Smith and J. Y. Johnston, all citizens and
3 residents of Knoxville, Knox county, Tennessee, and constituting the water works commission of the city of Knoxville in Knox county, Tennessee, and within the northern division of the eastern district of Tennessee.

And thereupon your orator complains and shows:

First.

That it, Knoxville Water Company, is a corporation duly and legally chartered and organized under the laws of the State of Tennessee, section 1, chapter 104 of the Acts of the General Assembly of the State of Tennessee for 1877, and duly certified copies of the charter, along with the amendment thereto, issued to your orator by the State of Tennessee *is* herewith filed as Exhibits Nos. 1 and 2 to this bill, and made a part of the same, but need not be copied in issuing process. The original charter issued to your orator is on file in this court in a case in equity pending in this court styled Knoxville Water Company against Mayor and Aldermen of the City of Knoxville, No 1260, upon the rule docket of this court, and your orator will ask permission, if it shall become material, to withdraw said original charter from that case in order that it may be filed in this case.

Second.

The defendant Mayor and Aldermen of the City of Knoxville is a municipal corporation, chartered under the laws of the State of Tennessee, and is located in Knox county in said city in the northern division of the eastern district of Tennessee.

The defendants, W. L. Russell, F. J. Callen, E. G. Oates, J. Allen

Smith and J. Y. Johnston, are all citizens and residents of said municipal corporation, and claim that they constitute, and do act as, the water works commission of said city of Knoxville,
4 and as such claim the power to exercise certain functions, powers and authority under an act of the General Assembly of Tennessee, known as chapter 153 of the Acts of 1903—The alleged powers and authority of said water works commission and said act will be hereinafter more specifically referred to.

For convenience, the defendant Mayor and Aldermen of the City of Knoxville, will be hereinafter referred to as defendant city, and the other defendants will be referred to as defendant commission.

Third.

Your orator further shows that leave to operate within the defendant city was not only obtained from the corporate authorities of defendant city, and such leave endorsed upon its application for charter and registered with it, but by the terms of its said charter, so granted to your orator as aforesaid, your orator was authorized to construct a system of water works at Knoxville, and its charter among other things contains the following:

"The business of said company shall be to establish and construct water works in or near the city of Knoxville, Tennessee, and it shall be the duty of said company to build, furnish and equip water works of sufficient capacity to furnish the corporate authorities and inhabitants of said city with water.

To enable the company to establish such water works it is hereby authorized and empowered to lay down pipes through the streets, lanes and alleys of said city, in such manner, however, as to produce the least possible inconvenience to the city or its inhabitants, or to travellers, and take up pavements and sidewalks, provided, they shall repair the same with the least possible delay.
5 The company shall have powers, and are hereby authorized to bring into said city a sufficient supply of water by means of pipes or tanks, or in any other way, and to construct reservoirs for the reception thereof, and to supply with water the inhabitants of said city and the environs thereof, and all who may be along the lines of the company pipes, and of erecting hydrants or fire plugs within said city, and to contract with said inhabitants and with the corporate authorities of said city or any incorporated companies for the use of said water, and charge such price for the same as may be agreed upon between said company and said parties, and consumers shall be subject to all such reasonable rules and regulations respecting the use and waste of said water as the directors of the company may from time to time prescribe."

Fourth.

Your orator further shows that in the year 1882, the defendant city had some ten or eleven thousand inhabitants, but was wholly

without a public water supply, either for municipal purposes or the uses and necessities of its inhabitants, save only such as was afforded by the streams in and about the city and the wells and cisterns, which had been provided by individual inhabitants for their own use. That among other powers conferred upon defendant city by the laws of the State of Tennessee, was the power and authority to provide the city and its inhabitants with a supply of water for fire protection, public, sanitary and domestic purposes, and in pursuance of this power and to carry out the duty owed by it to its inhabitants, the defendant city had some time prior to 1882, and as your orator is informed about 1879 or 1880, determined to build its
6 own water plant for the purpose of supplying itself and its inhabitants with water, and to that end had acquired a considerable amount of real estate lying principally in the 1st and 5th wards of the city of Knoxville—the property in the first ward being located upon the Tennessee river and was intended to be used as pumping station, and the property in the 5th ward being upon a high hill was intended to be used as a reservoir—but it became apparent to the corporate authorities of the defendant city that the building, erection and maintenance of a plant sufficient to supply the needs of defendant city and its inhabitants with water would involve a much larger sum than said defendant city could safely assume in view of the risks and uncertainties incident to such pioneer venture, and so it was resolved by the proper authorities of defendant city that its interests, needs and necessities and those of its inhabitants, would be best subserved by making a contract with some individual, company or private corporation to build a plant sufficient to supply defendant city and its inhabitants with water, and thereupon in 1882, determined to abandon its plan to build a municipal plant, and through its proper officials, by advertisement published in the newspapers printed in the city of Knoxville, invited bids and proposals for the erection of water works in the city of Knoxville, from any responsible person or company, said person or company to build and own the water works, giving the city the option of purchasing them at a certain period or periods to be agreed upon.

In pursuance of said advertisement two competitive propositions were submitted to defendant city, one by the city water company, a private corporation and the other by your orator. The proposition submitted by your orator was deemed more advantageous
7 to the defendant city and was accepted by it, and thereupon on the first day of July 1882, your orator and the defendant city, under the power and authority vested in each of them, duly and legally entered into a contract and agreement for the construction of water works within the city of Knoxville, a copy of which said contract and agreement is herewith filed as Exhibit No. 3 to this bill, and made a part of the same, but need not be copied in issuing process.

By reference to said Exhibit No. 3 your honors will see that in

order to supply said city and its inhabitants with water for fire protection and public, sanitary and domestic purposes, your orator among other things agreed:

A. To erect and establish upon and on the land acquired by the city for that purpose a system of water works sufficient to supply defendant city and its inhabitants with water to be taken from the Tennessee river at the site purchased by defendant city for that purpose.

B. To purchase from defendant city the property already acquired by it for the purpose of erecting water works, and to pay therefor within thirty days after the execution of said contract, and before commencing the construction of said works, the sum of seven thousand, eight hundred ($7,800) dollars.

C. To erect at the points designated by defendant city in said contract seventy-five (75) fire hydrants, and afterwards as many fire hydrants as defendant city might order.

D. *To furnish, free of charge to defendant city water from such hydrants for flushing its sewers and gutters, and for all purposes of the fire department, the city hall buildings and office, and prisons therein.*

E. To supply private consumers with water not to exceed a maximum rate fixed in the contract.

8 F. *To maintain said water works in such condition as may be sufficient and necessary to enable your orator to comply with its undertakings set out in said contract for a period of thirty years from January 1, 1883, unless defendant city should become the owner of said water works within that period, in the manner stipulated in said contract.*

G. To so amend its charter as to limit its bonded indebtedness to one hundred and fifty thousand ($150,000) dollars.

And in consideration of the agreements and undertakings on the part of your orator, the defendant city among other things agreed:

A. To grant and guarantee to your orator all right to, in and upon any and all streets, squares, lanes and alleys, under the control of the authorities of said city for the purpose of building and constructing its pipes, laying its mains, and making all necessary repairs thereon, and maintaining the same for the purpose of operation.

B. *Not to grant to any other person or corporation, any contract, or privilege to furnish water to the city of Knoxville, or the privilege of erecting upon the public streets, lanes or alleys, or other public grounds, for the purpose of furnishing the defendant city, or the inhabitants thereof with water for the full period of thirty years from the 1st. day of August 1883, provided the company (your orator) complied with the requirements and obligations imposed and assumed by them under and by virtue of this agreement.*

C. *To pay to your orator fifty dollars ($50.00) per annum for each fire hydrant to be erected under said contract.*

9 Further, under and by said contract it was mutually agreed between your orator and defendant city, that at the expiration

of fifteen years from the first day of August 1883, defendant city should have the right to purchase from your orator the water works, and all the property, rights, franchises and privileges, provided in and growing out of said contract "by negotiation, if thus a price could be agreed upon, or if not then at any time for a consideration to be fixed and determined by appraisers," in the manner stipulated and specifically set out in said contract.

The bond provided for in said contract was duly executed by your orator, who thereupon entered upon its undertaking to construct a plant in accordance with and under said contract, and your orator shows and avers unto your honors that it built said plant in compliance with said contract and agreement of July 1, 1882, and within the period therein required began to furnish water to the city of Knoxville and its inhabitants, and ever since that time has been and still is engaged in furnishing water to defendant city and its inhabitants in compliance with the terms and provisions of said contract, and certain amendments thereto, which will be hereinafter fully set out and shown to your honors.

When said contract of July 1, 1882, was entered into between your orator and defendant city, the municipal limits of defendant city of Knoxville were comprised within its first nine wards as they now exist, and the plant and property of your orator in these wards, in due time, were built specially in pursuance of and in compliance with said contract, Exhibit # 3 hereto all of which is shown unto your honors at this time, because as it will hereinafter appear the water supply was first furnished to what is now the 10th and 11th wards of the city of Knoxville under other contracts, which finally became the property of your orator, as will be hereinafter specifically shown.

Fifth.

Your orator further shows unto your honors that some time after it had built and constructed its water plant in compliance with said contract of July 1, 1882, and had thereunder been supplying water to defendant city and its inhabitants, the defendant city, being instigated by certain parties who had been interested in the city water company, whose proposition or offer of a contract had been rejected by defendant city in favor of that of your orator, refused to pay several thousand dollars of hydrant rentals which had accrued under said contract in favor of your orator, and thereupon on the 15th day of June 1885, in order to collect the amount justly due and owing to it from defendant city, your orator was compelled to file a bill in the chancery court of Knox county against defendant city for the purpose of forcing defendant city to comply with said contract and agreement of July 1, 1882, and pay to your orator the hydrant rentals which had accrued to it under said contract. To this bill the defendant first interposed a plea which was overruled, and thereupon defendant city on the 31 day of August 1885 filed an answer

in and by which it set up every possible defense that could have been made by able and ingenious counsel, among which were a denial of the validity of the contract of July 1, 1882 and that your orator had complied therewith. After a large amount of proof had been taken thereon, the case was heard before the chancery court of Knox county on the 4th day of August 1886, and your orator
11 was given a decree for the entire amount sued for as hydrant rental, to-wit, eight thousand seven — seventy five and 26 / 100 ($8,775.86) dollars, including interest. From this decree there was an appeal to the supreme court of Tennessee, wherein on the 7th day of Sept. 1887, in compliance with and conformity to the practice of that court, counsel for defendant city filed assignments of error in which they insisted on substantially all the grounds of objection to the contract that had been set out in the answer of the defendant city, hereinbefore referred to. But after a full hearing upon the transcript of the record from the chancery court of Knox county in said cause, entitled, Knoxville Water Company against Mayor & Aldermen of the City of Knoxville, it was ordered, adjudged and decreed by the supreme court of Tennessee, that there was no error in the decree of the chancery court of Knox county, hereinbefore referred to, that the same was in all things correct, and therefore said decree was accordingly in all things affirmed.

The judgment and decree of the supreme court of Tennessee was entered on October 18, 1887, by a *nunc pro tunc* order appearing upon the minutes of said court under date of October 26, 1887. A petition to rehear was filed in the supreme court, upon which that court rendered a decree on October 26th, 1887, which, after giving the style of the case as above stated, is in the following words:

"Be it remembered that this cause came on to be further heard before the supreme court of Tennessee upon all the proceedings heretofore had in this cause, but more specially upon the petition filed by the defendant to rehear this cause, and the answer thereto. And the court being of the opinion that there is no merit set up in the defense made by defendant to the suit of complainant, and that this is for that reason not a proper case to rehear, the court
12 is pleased to so decree, and to decree that said petition to rehear be and the same is hereby dismissed, and the defendant and its sureties on the appeal bond pay all the costs accrued on said petition to rehear for which execution is awarded."

Therefore your orator avers that the validity of said contract of July 1, 1882, together with a full compliance therewith upon the part of your orator, was adjudged by the supreme court of the State of Tennessee, so that said contract was and is binding upon defendant city and its legality cannot be challenged or attacked.

Sixth.

Further, your orator shows unto your honors that after the aforesaid decree of the chancery court of Knox county in favor of your

orator in the aforesaid cause of Knoxville Water Company against Mayor and Aldermen of the City of Knoxville has been affirmed by the supreme court of the State of Tennessee, as hereinbefore set out, and judgment rendered in favor of your orator against defendant city for the sum of eight thousand seven — seventy five and 86/100 ($8,775.86) dollars, hydrant rental, as hereinbefore shown, and execution had been ordered to issue against defendant city and the sureties upon her appeal bond for said sum and all the costs of said cause, on or about Feb'y 9th, 1888, a proposition was made by the then officials of your orator to defendant city to settle and compromise the differences then existing between your orator and defendant city, and suggesting certain modifications of said contract of July 1, 1882, whereby, among other things the hydrant rental which
13 the city had agreed to pay your orator in said contract was reduced from fifty dollars ($50.00) per annum, to the sum of forty-five ($54.00) dollars per annum for all hydrants over one hundred, and after consideration thereof, said proposition upon the part of your orator was accepted and adopted by defendant city, thus modifying said contract of July 1, 1882, Exhibit No. 3 hereto, in certain particulars set out in said proposition and the resolution adopting and accepting the same, a certified copy of which from the minutes of defendant city, is herewith filed as Exhibit No. 4, to this bill and is made a part of the same, but need not be copied in issuing process.

Seventh.

Your orator further shows unto your honors that on the 18th. day of April 1891, the town of North Knoxville, then a municipal corporation contiguous to defendant city, entered into a contract with a co-partnership styled Wheeler & Parks, their successors and assigns, for the purpose of securing a supply of water to said town and its inhabitants until June 3, 1913, a duly certified copy of which contract is herewith filed as Exhibit No. 5, to this bill, and is made a part of the same, but need not be copied in issuing process. This contract between the town of North Knoxville and Wheeler & Parks was, on November 17, 1893, duly assigned by said Wheeler & Parks to your orator, who in all respects complied with its terms and provisions, but the number of hydrants in that territory are still less than fifty, although your orator has been ready and willing, and still is, to erect additional hydrants on the order of defendant city.

Eighth.

Your orator further shows unto your honors that in 1891, the Lonsdale-Beaumont Water Company was chartered under the laws of the State of Tennessee, chapter 115 of the Acts of the General Assembly of the State of Tennessee for 1885, for the purpose of
14 supplying to the town of West Knoxville, which was then another separate municipality contiguous to the defendant

city of Knoxville; a duly certified copy of the charter of said Lonsdale-Beaumont Water Company is herewith filed as Exhibit 6 to this bill, and is made a part of the same but need not be copied in issuing process.

On the 17th day of September 1892, said town of West Knoxville and said Lonsdale-Beaumont Water Company duly and legally entered into a contract, under and by which said Lonsdale-Beaumont Water Company agreed to erect and build, and did erect and build a system of water works to supply said town and its inhabitants with water: a certified copy of said contract is herewith filed as Exhibit No. 7 to this bill, and made a part of the same, but need not be copied in issuing process. Your orator here calls to the attention of your honors the provisions of said contract of September 17, 1892, as set out in section 13 thereof, whereby it was agreed and provided that after the expiration of seven years from the date of said contract, said town of West Knoxville, or its successors, shall have the right to purchase the plant and property of said Lonsdale-Beaumont Water Company at such price as said parties might agree upon, but if no agreement in respect to the price could be made, then at such price as might be fixed upon an appraisal of said plant and property in the manner stipulated and specifically set out in the 13th section of said contract.

Ninth.

The powers and authorities vested by the laws of the State of Tennessee in the aforesaid towns of West and North Knoxville in regard to water supply, are set forth in their charters in identically the same language as follows:

"To provide the town with water works, or contract with others for water within or beyond the town limits, for town and corporate purposes."

By chapter 323 of the Acts of the General Assembly of the State of Tennessee for 1897, the city of Knoxville, and said towns of West and North Knoxville, were consolidated—the town of West Knoxville becoming the 10th ward and the town of North Knoxville, becoming the 11th ward of defendant city—and by section 8 of said act of consolidation it was provided and enacted "that all valid and lawful contracts of the towns of West Knoxville and of North Knoxville, shall be carried out and performed by the board of mayor and aldermen of the city of Knoxville," and your orator avers that the aforesaid contracts of April 18, 1891, and September 17, 1892, Exhibits Nos. 5 and 7 hereto, were valid and lawful contracts of said towns of West Knoxville and North Knoxville, and by said act of concolidation became obligations of defendant City of Knoxville.

Tenth.

Your orator further shows unto your honors that in the year 1899, the defendant city had grown in population until there were within its limits more than thirty three thousand (33,000) inhabitants, and there had developed necessities for the extension of water mains into certain districts of the city which theretofore had been but very sparsely populated; that at this time the Lonsdale-Beaumont Water Company found itself in such a financial condition that for business reasons, and in order to enable it to comply with its contract with the former town of West Knoxville, as hereinbefore set out, it became desirable that consolidation of said Lonsdale-Beaumont Water
16 Company with your orator be effected, and thereupon said companies, in compliance with the laws of the State of Tennessee, made application to defendant city for permission to consolidate and in order that the consolidated company might be enabled to make all p-oper and necessary extensions of its mains and plant to meet the growing demand for water, that the bond limitation contained in the aforesaid contract of July 1, 1882, Exhibit #3 hereto be removed, but before defendant city would give its consent and approval to said consolidation, said defendant city annexed thereto certain conditions amending the contracts then existing between said consolidating companies and the defendant city, and particularly amending in its own interest the contract of July 1, 1882, and requiring that the ordi-ance granting its approval and consent to said consolidation and containing said amendments to said contracts, should within thirty days, be accepted in writing by said consolidating companies.

Among the most material conditions annexed to said consent and approval were:

(A.) A reservation of the rates provided in the Lonsdale-Beaumont contract of September 17, 1892, in favor of the inhabitants of the 10th. ward of the city (formerly the town of West Knoxville), and that the water to be supplied to said 10th. ward should be equal in quality to that then being supplied by the Knoxville Water Company, which was filtered and was recognized to be of the very best quality."

This condition was especially insisted upon by the inhabitants of the 10th. ward of the city of Knoxville acting through a committee and an attorney who appeared before the council, and in fact drafted that part of said ordinance.

(B.) That the Knoxville Water Company would continue to furnish to all the inhabitants of the remaining wards of the city of Knoxville, other than the 10th ward filtered water at a
17 maximum rate not exceeding the schedule of rates and charges then in force and operation by your orator, under the aforesaid contract of July 1, 1882.

This was the first provision making it obligatory upon your orator to furnish filtered water to the inhabitants of the city of Knoxville, except the provision contained in the North Knoxville contract, which was limited to that territory.

(C.) The option and right to purchase reserved by defendant city in its contract of July 1, 1882, with your orator, and covering only the property of your orator was extended to all the property which it then owned or might afterwards acquire, or which might be acquired by the consolidated company.

(D.) That in order that the consolidations provided for may be effected and to enable your orator and the Lonsdale-Beaumont Water Company to fund their existing debts and obligations, and to provide funds to improve the consolidated plant and make extensions thereto, and in consideration of the benefit to be derived therefrom by the city of Knoxville, and its inhabitants, your orator was released from that provision of its contract with defendant city, dated July 1, 1882, limiting its indebtedness to one hundred and fifty thousand ($150,000) dollars, and that provision was abrogated and annulled;

"Provided, however, that not more than eight hundred thousand ($800,000) dollars of bonds should be issued prior to the first day of January 1901, and provided, further, that no bonds in excess of eight hundred thousand dollars shall be issued except to provide funds for additions to and improvements of the plant and property of your orator, and for any bonds to be so issued your orator was required to file with the recorder of defendant city a sworn certificate showing the actual cost of such additions or improvements, for which bonds may be issued."

18 So may it please your honors the defendant city and your orator on the 20th. day of October, 1899, by an ordinance-contract of that date, legally passed by the defendant and accepted by your orator, entered into an agreement amending the contract then existing between your orator and the defendant, all of which appears from a certified copy of said ordinance-contract of October 20, 1899, and the acceptance thereof by the Lonsdale-Beaumont Water Company and your orator, herewith filed as Exhibit No. 8 hereto and made a part of this bill, but need not be copied in issuing process.

On Jan'y 1, 1900, the consolidation provided for by the ordinance-contract of October 20, 1899, was effected by a conveyance by the Lonsdale-Beaumont Water Company of all its property, contracts, rights, franchises, etc. to your orator, and this conveyance was duly recorded in the office of the secretary of state of the State of Tennessee, as provided by the laws of said State of Tennessee.

Eleventh.

Your orator further shows unto your honors that in the year 1900, the municipal authorities of the city of Knoxville, notwithstanding

your orator was complying in full with all of its contract obligations, began to harrass your orator by passing certain ordinances assuming to regulate the rates and charges of your orator, all of which were in compliance with the terms and provisions of its contracts, and particularly the ordinance-contract of October 20, 1899, and certain litigation was begun by the defendant city before
19 its own recorder to enforce the provisions of said ordinance regulating the rates and charges of your orator, and reducing the same about 22 %, but after the suits instituted by defendant city had been appealed by your orator to the circuit court of Knox county it was discovered that said ordinance, passed on or about July 27. 1900, was invalid for reasons not here necessary to be noticed, and thereupon on March 30, 1901, defendant city again passed an ordinance, in substance the same as the once first passed and ordained, assuming to regulate the charges and rates of your orator. The right of defendant city to pass said ordinance, or to regulate the rates of your orator, was contested, and after litigation between your orator and defendant city, it was determined by the supreme court of the State of Tennessee, whose judgment, upon writ of error to the Supreme Court of the United States was affirmed by that court, that defendant city had the right to regulate the rates and charges of your orator, but that any ordinance so attempting to regulate rates must be reasonable, and in this connection your orator asks leave to refer to the opinion of the supreme court of the State of Tennessee reported in 107 Tenn. 647, and to the Supreme Court of the United States, reported in 189 U. S. 434 where, by both of said courts, the contracts between your orator and defendant city were again recognized as binding upon defendant city by the supreme court of the State of Tennessee, and was recognized by the Supreme Court of the United States, except, however, that under section 2 of chapter 104 of the Acts of 1877, wherein your orator was chartered and organized, defendant city had the right to reasonably regulate the price of water supplied by your orator under its aforesaid contracts. And in this connection your orator deems it proper to say unto your honors
20 that there is pending in this court a suit in equity instituted by your orator against the defendant city challenging said ordinance of March 30, 1901, upon the ground, among other things, that the same is unreasonable and in violation of the 14th amendment to the Constitution of the United States, and such proceedings have been had in said suit in equity, No. 1260 upon the rule docket of this court, that after a large amount of proof has been taken by the master specially appointed in said cause to hear proof and report to your honors, a first draft or tentative report, has been by said special master submitted to counsel, both of your orator and of the defendant city, in order that they may file objections thereto under the rules of this court, and the effect of said report is to hold that said ordinance of March 30, 1901 is invalid because the same is unreasonable and will not yield to your orator a fair return upon the fair

value of its plant now used in furnishing water to defendant city and its inhabitants.

Twelfth.

Your orator further shows unto your honors that after repeated agitation, which was largely injected into several political campaigns, there was developed a strong feeling in favor of municipal ownership and a desire that the city should own and operate for the use of itself and its inhabitants a water plant so that to the end that the plant and property of your orator might be acquired, the General Assembly of the State of Tennessee by an act passed on January 29, 1903, and approved by the governor on Feb'y 2, 1903, known as chapter 12 of the Acts of 1903, and entitled "An act to authorize the city of Knoxville to issue bonds to purchase and acquire the plant and property of the Knoxville Water Company, build extensions thereto and maintain and operate the same," authorized the city of
21 Knoxville to issue bonds "to enable it to acquire the plant and property of the Knoxville Water Company, in accordance with the terms and provisions of the aforesaid contract of July 1, 1882, and the ordinance-contract of October 20, 1899," a true copy of said act is herewith filed as Exhibit No. 9, to this bill and made a part of, the same, but need not be copied in issuing process. And a certified copy of said act or the pamphlet acts published under the authority of the General Assembly will be produced on the hearing of this cause, or sooner if required.

Your orator further shows unto your honors that soon after the passage of said chapter 12 of the Acts of 1903, which was introduced and pressed for passage by the representatives of Knox county in the General Assembly, and gave full power and authority to defendant city to enforce its reserved right to purchase all the plant and property of your orator, it developed by renewed agitation in the city of Knoxville that it was the desire of certain parties to pass another act authorizing the city of Knoxville to build and construct a plant to be run in competition with the plant of your orator, so that such power and authority might be used as a club to compel your orator to sell its plant for less than it was worth, and to deprive it of its contract rights under its aforesaid contract of July 1, 1882, Exhibit No. 3 hereto, and the ordinance-contract of October 20, 1899, No. 8 hereto, and to enable the city to acquire the plant and property of your orator upon its own terms freed from the provisions of said contract of July 1, 1882, in respect of the appraisal of the plant and property of your orator: so that another bill was introduced or offered to the General Assembly authorizing defendant city
22 to issue seven hundred and fifty thousand dollars of bonds to enable it to build and construct a separate and independent plant, coupled with certain provisions authorizing it to negotiate with your orator for the purchase of the plant and property of your orator without reference to your orator's contract rights, and in utter

disregard of the same, and repealing all parts of chapter 12 of the Acts of 1903 in conflict therewith.

This last bill, so offered, as aforesaid, was endorsed by a resolution of the board of mayor & aldermen of defendant city, was pressed before the members of the General Assembly by a committee of citizens, who publicly announced that it was desired to use the "power to build" as a menace to your orator, and was also advocated by the mayor and the chairman of the board of public works of defendant city—both of whom appeared in person before the General Assembly,—so that it was claimed that said General Assembly of the State of Tennessee, passed said bill and enacted the same into a law on March 31, 1903, which was approved by the governor of the State of Tennessee on April 3, 1903, and which legislative act is found among the published acts of the General Assembly for 1903, as chapter 153 of said acts, and a true copy thereof is herewith filed as Exhibit No. 10 to this bill, and for purposes of reference merely, is made a part of the same but need not be copied in issuing process.

Thirteenth.

Your orator further shows unto your honors that defendant city under the authority claimed to be vested in it by said chapter 153 of the Acts of 1903, on or about the 17th day of July, 1903, appointed and elected the defendants W. L. Russell, F. J. Callen, E. G. Oates, J. Allen Smith and one Peter Staub as members of its
23 water works commission, as provided by section 4 of said act, and your orator is informed that said persons so designated and named organized and elected said Staub as chairman of said water works commission, and one Norman B. Morrell, as secretary of said commission. Whether the members of said commission were appointed in strict compliance with said chapter 153 of the Acts of 1903, and whether they were eligible to act upon said commission, and whether they properly qualified as required by said act, your orator is not advised, but deems it sufficient to show unto your honors that said persons so named proceeded to act as a water works commission and were so recognized by defendant city.

Your orator further shows that said defendants, so claiming to act as the water works commission of defendant city, on or about the 6th day of October 1903, sent to your orator a letter which was in the words and figures following, to-wit:

"KNOXVILLE, TENN., September 28, 1903.

Knoxville Water Company, Knoxville, Tennessee.

GENTLEMEN: Under the act creating the Knoxville water works commission, the commissioners are authorized and directed to obtain from the Knoxville Water Company a written proposition for the sale of the plant and franchises, with the view of purchasing the same upon an agreed price and satisfactory terms.

The commission therefore desires to know if the Knoxville Water Company will sell to the city of Knoxville its plant and franchises, and if so, at what price and upon what terms.

KNOXVILLE WATERWORKS COMMISSION,
(Signed) By PETER STAUB, Chairman.
NORMAN B. MORRELL, Secretary."

24 In response to this communication your orator submitted to said commission a proposition to sell its plant and property to the city embodied in a written communication as follows:

"BOSTON, MASS., October 19, 1903.

Knoxville waterworks commission, Knoxville, Tenn.

GENTLEMEN: Your favor under date of Sept. 28th ult. was received by our Knoxville office Oct. 6th., and has been duly noted.

Replying to your inquiry as to whether the "Knoxville Water Company will sell to the city of Knoxville its plants and franchises, and if so, at what price and upon what terms," we beg to advise you that we recognize fully the right of the city to purchase the plant and property of the Knoxville Water Co. under the contract existing between us and the city dated July 1st, 1882, and the several amendments thereto. We beg to assure you that we are entirely willing to comply with every obligation imposed upon us by said contract, and to sell to the city of Knoxville said plant and property at a price to be ascertained in the manner specifically provided and set out in said contract.

Further replying to your inquiry in respect to the "terms," we beg to assure you that while it may be reasonably inferred from said contract that the price to be fixed and arrived at in the manner therein provided shall be paid in cash, yet we do not anticipate any serious disagreement between the city and ourselves with respect to the terms or time of payment when once the fair price contemplated by said contract is determined upon.

We shall be pleased to at once take up the matter with the city authorities, to the end that the provisions of said contract re-
25 specting the sale by the company and the purchase by the city may be effectuated, and hope to receive further communication from you thereon at your convenience.

Yours very truly,

KNOXVILLE WATER CO.
(Signed) ELBERT WHEELER, Treas."

Your orator further shows unto your honors that it had no direct response to its said proposition under date of October 19, 1903, from said water works commission until on or about April 18, 1904, it received another communication from said water works commission, which was in the words and figures following:

"KNOXVILLE, TENN., March 22, 1904.

Knoxville Water Company, Knoxville, Tennessee.

GENTLEMEN: On September —, 1903, we addressed a letter to the Knoxville Water Company, advising the company that under the act creating this commission we were authorized and directed to obtain from the water company, a written proposition for the sale of its plant and franchises, and asking if the company would sell, and if so, at what price and upon what terms.

To this letter you replied that the company was willing to sell according to the terms of a contract made between the water company and the city of Knoxville, July 1st, 1882. We beg to say that we have nothing to do with this contract, as this commission is created under the act of Tennessee legislature, 1903, chapter 153, being "An act to authorize the city of Knoxville to own and operate a system of waterworks, etc."

26 Your mistake in apparently presuming that this commission is acting under the contract of 1882 prompts us to call your attention to this particular act, chapter 153, and to repeat our former inquiry under the same: Will you, the Knoxville Water Company, make a written proposition to the city of Knoxville, through this commission, for the sale of the plant, franchises, etc. as indicated in act to which we have herein referred?

Yours very truly,

KNOXVILLE WATER WORKS COMMISSION.

By PETER STAUB, Chairman.

(Signed) NORMAN B. MORRELL, Secretary."

Thereupon, in order that there might be no sort of misunderstanding in regard to the proposition which your orator had submitted to defendant city through its said water works commission, your orator on or about April 27, 1904, replied to the communication which it had received from said commission on or about April 18, 1904, but which was dated March 22, 1904, and specifically stated the manner in and by which defendant city could acquire and purchase the plant and property of your orator, all of which was embodied in writing as follows:

"BOSTON, MASS., April 27, 1904.

Knoxville water works commission, Hon. Peter Staub, chairman, Knoxville, Tenn.

GENTLEMEN: Replying to your letter of March 22nd. ult. (received as we are advised by our Knoxville office, on April 18th.

27 inst.), renewing your request of September 28, 1903, for proposition for the sale of the plant and property of the Knoxville Water Company to the city of Knoxville, we beg leave to say that if the city concludes to purchase said plant and property, the same may be acquired by it on the following terms, viz:

Each party shall choose two disinterested persons, non-residents of said city, and also of the county of Knox, in the State of Tennessee, and the four thus chosen shall elect a fifth person, likewise disinterested and a non-resident of Knox county, and the said five persons thus chosen shall constitute a board of appraisers, and having accepted their appointment shall each take and subscribe an oath to act fairly, honestly, and impartially in the premises, and having so done, shall proceed to value and appraise the waterworks aforesaid, and all the rights, privileges, easements, and other property appurtenant to said waterworks, belonging to said company, and also to ascertain, determine and declare the amount of indebtedness of said company then in existence, whether by bond or otherwise, constituting a charge upon the property of said company appurtenant thereto aforesaid. And when the purchase price so fixed and determined shall be paid to said company by the city then said company shall and will forthwith, by proper deeds of conveyance, assign, transfer, set over and convey to said city of Knoxville said waterworks and all the rights, franchises, easements, privileges and other property appurtenant thereto, owned by said company at the date of such appraisal and award.

We make the foregoing suggestion of a method to arrive at an amount to be paid for the property, etc., of the Knoxville Water Co., because said company fully recognizes the right of the
28 city to purchase its property, and does not desire to place any obstruction in the way of the city's acquiring said property, but, as you have been advised by our counsel, and of course will well understand, we cannot, and do not at this time name a fixed and specific price, or the terms of payment, for the reason that one of the most material questions involved in the suit now pending between the city and the water company, and now being, considered by Special Commissioner Ewing, is the fair value of said property on a certain date; and we do not desire to do anything that might prejudice the interests of either party to said suit, or which might be construed into an effort to do so. Therefore, we repeat, if the city desires to accept the terms of this proposition, we shall be pleased to meet proper authorities of the city in order to arrange the necessary details as early as practicable.

Very respectfully,

KNOXVILLE WATER COMPANY.

(Signed) ELBERT WHEELER, Treas."

Therefore your orator shows unto your honors and charges that it submitted in writing a proposition for the sale of its plant, franchises etc. to defendant city, under and by which the price and terms of payment could be easily fixed and made certain, and your orator charges that its said proposition so submitted to defendant city through defendant commission was, in law, definite and certain, and was all that defendant city was entitled to, and was not only in full compliance with the method of appraisal provided for in the afore-

said contract of July 1, 1882, but was, in law, a full compliance with "the written proposition for the sale of its plant, franchises, etc.," referred to in section 8 chapter 153 of the Acts of 1903 Exhibit No. 9 hereto.

29 Your orator further shows unto your honors that notwithstanding the written proposition for sale of its property, franchises etc. made by it to defendant city and defendant commission, as hereinbefore set out, the defendant commission on or about the 20th. day of May, 1904, submitted a report to the board of mayor & aldermen of defendant city, which purported to have been signed by defendants Russell, Callen, Oates and Smith (said Staub having died on or about May 18, 1904) wherein, among other things, defendant commission reported that they had been unable to obtain from your orator a written proposition for the sale of its property, franchises, etc., to defendant city, and further reported upon the great benefits to be derived by defendant city from municipal ownership in general and specially from the ownership of a plant which, as stated in said report, was estimated by one Owen Ford to cost $656,483.00, and by one John W. Hill, to cost about $677,730.00, but which report was not accompanied by plans and specifications of said pla-t as required by section 8 of said chapter 153 of the Acts of 1903, and which report was not accompanied by "the opinion of competent disinterested experts as to cost and present value of" the plant, and property and franchises of your orator as required by said section 8 of chapter 153 of the Acts of 1903.

And in this connection your orator further shows unto your honors that defendant commission, either did not procure an opinion from disinterested experts as to the cost and present value of the plant and property of your orator as they were directed to do by section 8 of said chapter 153 of the Acts of 1903, or that if they did procure such an opinion, the same was intentionally and for same ulterior purpose sup-ressed by defendant commission and not submitted by it to the city council of defendant city for its consideration, along

30 with the report and the recommendations which defendant commission made to defendant city. Your orator is informed, and therefore charges the fact to be that if defendant commission did obtain an opinion from the aforesaid Owen Ford in respect of the cost and present value of the plant and property of your orator, it refused upon the demand of a tax payer, who happened to be one of the attorneys for your orator, either to publish said opinion or to submit the same to the "city council" of defendant city, and therefore your orator charges that the sup-ression of said opinion was wrongful and with the intention to deprive said city council and the voters of defendant city of all information in regard to the plant and property of your orator, and to keep from the consideration of the council of defendant city that most material matter which defendant commission was required and directed to obtain and lay before said city council for its consideration.

Your orator further shows unto your honors that notwithstand-

ing its failure to comply with the requirements of section 8 of chapter 153 of the Acts of 1903, in the particulars hereinbefore set out, and its failure to secure such plans and specifications of a new system of warer works as was contemplated in and required by said section 8, yet said defendant commission, through four of its members, as hereinbefore set out, on the 20th. day of May, 1904, reported in writing to the city council, as hereinbefore set out, among other things, in addition to those hereinbefore referred to and stated, that they had "unanimously decided to recommend the building by the city of Knoxville of a system of waterworks, as indicated in Mr. Ford's report, and request that you immediately take the necessary steps to submit the question to our citizens, so that they
31 should decide by their vote to authorize the issuance of the bonds for the specific purpose," that is, the building of a system of water works as indicated by said Ford to be run in competition with the plant and property of your orator.

Your orator further shows unto your honors that the aforesaid report of defendant commission was, in substance, adopted by the corporate authorities of defendant city, and at the same meeting of the board of mayor and aldermen of defendant city, at which said report was presented and adopted, by resolutation of said board of mayor and aldermen an election was ordered to be held on the 2nd. day of July, 1904, "at which shall be submitted to the vote of the qualified voters of the city of Knoxville the question whether or not the city shall issue bonds as provided in the act of the General Assembly aforesaid, to be used for the construction of water works," but on the 3rd. day of June 1904, said action ordering an election for the 2nd. day of July 1904, was rescinded by a resolution duly passed by the board of mayor and aldermen of defendant city, and another resolution passed wherein it was ordered, in lieu of said resolution of May 20, 1904, "that the election on the water works bonds, be held on Saturday July 9, 1904," but without designating the specific purpose for which said bonds were to be issued, and in pursuance of said resolution your orator is informed and so charges the fact to be that the election commissioners of Knox county called an election in the city of Knoxville on the 9th. day of July 1904, for the purpose of voting for or against bonds to be issued for the sole purpose of building and constructing a separate and independent water system for the city of Knoxville, and at said election so held on July 9th, 1904, it was claimed by defendant city and defendant commission that 1818 votes were cast in favor of the issuance of said bonds, and 239 votes against the issuance of said bonds, but your orator shows and charges that said
32 election was not held in compliance with the provisions of said chapter 153 of the Acts of 1903, Exhibit No. 9, hereto, and particularly it was not held in compliance with specific requirements of section 15 of said act, and defendant city wholly failed and refused to have submitted to the legally qualified voters of defendant city the question whether defendant city should purchase the

plant of your orator or construct a new water system, but submitted only one question, and that was whether or not the defendant city should issue bonds for the purpose of building and constructing an independent plant, although as a matter of fact, as your orator is informed and believes, and so charges, a large number of voters were deluded into voting for the bonds upon the statement of those advocating the bonds that they could be issued for the purpose of buying the plant and property of your orator, as well as for building and constructing an independent plant.

Your orator further shows unto your honors that in pursuance of defendant's declared purpose to issue bonds to construct an independent municipal water plant, the city council of the defendant city at its regular meeting on Friday night, July 22nd. 1904, passed upon its first reading an ordinance declaring that at said election on July 9th. 1904, there were cast in favor of the issuance of bonds for the construction of a system of water works, 1818 votes and only 239 votes against said bonds, and that therefore more than ⅔rds. of the votes cast at said election were for the issuance of bonds for said purpose, and further declaring that said bonds were authorized to be issued as a result of said election. And at the same meeting said council or board of aldermen of defendant city passed a resolution binding itself to incorporate into the budget an appropriation
33 of $2,100 to defendant commission, "for the purpose of securing plans and specifications for building a system of water works as provided by chapter 153 of the Acts of 1903." And further at the same meeting said council or board of aldermen upon the nomination of the mayor of defendant city re-elected defendant Smith as a member of said water works commission, and also elected the defendant J. Y. Johnston as a member of said commission to fill out the unexpired term of Peter Staub, deceased.

Fourteenth.

Your orator further shows unto your honors that under and by virtue of its several contracts with defendant city and its charter from the State it has the exclusive right to furnish to defendant city and its inhabitants water for fire protection, public, sanitary and domestic purposes until the first day of August 1903, and relying upon said exclusive right and the guarantees of its charter and of its several contracts with defendant city it has invested in its plant and property, in and about Knoxville, several hundred thousand of dollars, upon which and in pursuance of its agreements with defendant city it has issued its bonds aggregating about $665,000, the proceeds of which, in addition to its stock, have been used in building, maintaining and operating a plant for the purpose of supplying defendant city and its inhabitants with water under and in compliance with its aforesaid contracts; and in addition to said bonds already issued and in the hands of *bona fide* purchasers for value your orator, under its mortgage deed of trust, is fully entitled to

have additional bonds issued for the extensions and additions which it has made to its plant since said $665,000 of bonds were
34 issued to the amount of $125,000; said additional issue to be used for retiring its floating indebtedness and other uses specially set forth in said deed of trust.

And your orator further shows unto your honors that its plant has been built, its bonds sold and its stock issued and sold to a large number of persons, who have purchased the same, upon the faith of your orator's exclusive right to furnish water to defendant city and its inhabitants, as hereinbefore averred, and upon the faith of your orator's contracts with defendant city, and also with the distinct understanding that if defendant city within the period covered by said contract of July 1, 1882, should desire to own and operate a water works plant, that it would acquire the plant and property of your orator under the terms and in the manner provided by said contract of July 1, 1882, recognized and extended by the ordinance-contract of October 20, 1899.

Your orator further shows unto your honors that under its aforesaid contracts with defendant city, *it has set upon* pipes and mains for the use of defendant city 250 hydrants, of which less than 50 are in the 11th. ward of defendant city, formerly the territory covered — the town of North Knoxville, and the aforesaid contract of Wheeler & Parks with said town of North Knoxville, Exhibit No. 5 hereto; and your orator stands ready and willing to erect as many more hydrants upon its pipes and mains as defendant city may desire or order it to erect. But, notwithstanding this fact, defendant city and defendant commission are taking steps to erect some 575 hydrants upon the pipes and mains of a plant devised by Owen Ford, many of which are located within the aforesaid 11th. ward of defendant city, although the number provided for in the contract of Wheeler & Parks with the town of North Knoxville have not yet been erected in said ward, and have never been ordered by defendant city to be so erected, although your orator stands willing
35 and is ready and willing to erect as many hydrants in that territory, or any part of the territory of defendant city as defendant city might need or desire to order.

Your orator further shows unto your honors that it has lived up to and complied with all of its contracts with defendant city and that it has been furnishing defendant city and its inhabitants with an ample supply of water for fire protection, public, sanitary and domestic purposes as contemplated by its said contracts with defendant city and your orator charges that under and by the said contracts, and particularly said contract of July 1, 1882, said ordinance contract of October 20, 1899, and said contracts of the towns of West and North Knoxville with Wheeler & Parks and the Lonsdale-Beaumont Water Company, defendant city exhausted its power to build a separate, independent and competing water plant during the aforesaid periods covered by said contracts, therefore it was and is without power or authority to build a separate, independent and

competing plant to supply itself and its inhabitants with water during the life of the aforesaid contracts, that is before August 1, 1913.

Therefore your orator further charges that said alleged act of the General Assembly of Tennessee known as aforesaid, as chapter 153 of the Acts of 1903, Exhibit No. 10 hereto, is invalid and in contravention, both of the constitution of the State of Tennessee and the Constitution of the United States in that it impairs the obligations of the contracts between your orator and defendant city hereinbefore set out, and especially those provisions of said contracts giving and granting to your orator the exclusive right to furnish defendant and its inhabitants with water until August 1, 1913, and the exclusive right to furnish hydrants to the territory covered by the Wheeler & Parks contracts of April 18, 1891, Exhibit No. 5 hereto, until June 3, 1913.

Your orator further charges and avers that the acts and doings of defendant city in pursuance of the authority assumed to be
36 vested in it by said chapter 153 of the Acts of 1903 is a violation of its contract obligations, as hereinbefore set out, and constitute an impairment of said obligations, within the prohibition both of the constitution of the State of Tennessee, and the Constitution of the United States, which your orator here specially invokes for its protection.

Fifteenth.

Your orator further shows unto your honors that under and by section 3 of said chapter 153 of the Acts of 1903, it is among other things provided in reference to the bonds referred to in said act, that "said bonds and coupons attached thereto shall be exempt from municipal taxation," which provision your orator charges is a separate and independent subject from that expressed in the title of said act and is in no way germane to the subject expressed in the title of said act, and that therefore said act contains more than one subject causing it to be void and in contravention of the constitution of the State of Tennessee which expressly provides that "no bill shall become a law which embraces more than one subject, that subject to be expressed in the title."

But if said act is not void because in contravention of that provision of the constitution of the State of Tennessee above set forth, then your orator further shows and charges that said attempted exemption of said bonds from municipal taxation was unauthorized and beyond the power of the General Assembly of the State of Tennessee, because in contravention of § 28 of article 2 of the constitution of the State of Tennessee, as follows:

"All property, real, personal or mixed, shall be taxed, but the legislature may except such as may be held by the State, by counties, cities or towns, and used exclusively for public or corporation
37 purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary, or educational."

Therefore your orator shows that said bonds do not come within any class on account of which the legislature may exempt the same from taxation.

Your orator further shows that by section 18 of article 2 of the constitution of Tennessee, it is, among other things, provided that, "No bill shall become a law until it shall have been read and passed on three different days in each house, and shall have received on its final passage in each house, the assent of a majority of all the members to which that house shall be entitled under this constitution, and *shall have been signed by the respective speakers in open session, the fact of such signing to be noted on the journal," etc.*, and your orator charges that said act of the General Assembly of the State of Tennessee, known as chapter 153 of the Acts of 1903, as aforesaid, was not signed by the speaker of the senate in open session, nor was the fact of such signing noted upon the journals of the senate and is not now so noted, so that your orator charges that said act not having been passed in conformity with the aforesaid mandatory requirements of the constitution of Tennessee, and not having received the signature of the speaker of the senate in open session, which fact was not and is not noted upon the journal of the senate, is therefore void and in contravention of the constitution of Tennessee.

Sixteenth.

Your orator further shows unto your honors and charges that said election held, as aforesaid, on the 9th. day of July, 1904, was void, because:

38 1. Defendant commission either did not secure the opinion of competent disinterested experts as to cost and present value of the plant of your orator, or did not report such opinion to the city council of defendant city for its consideration as required by section 8 of said chapter 153 of the Acts of 1903.

2. That said defendant commission did not secure plans and specifications such as contemplated and required by said section 8 for the construction of a new system of water works and did not report the same to the city council of defendant city for its consideration.

3. That notwithstanding your orator has submitted to defendant commission a written proposition for the sale of its plant and franchises, yet defendant city wholly failed and refused to submit to its qualified voters the question whether said defendant city should purchase the plant of your orator, but submitted alone the question as to whether bonds should be issued to build a separate, independent and competing plant.

4. That said election was not legally ordered or advertised, in that the order of the city council and advertisement by the election commissioners was so insufficient, vague and indefinite as to be void.

Your orator further shows unto your honors that it is one of the largest, if not the largest tax payer in the city of Knoxville, and that its plant and property is valued by the State and municipal

authorities for purposes of taxation at about the sum of $418,000, upon which it pays ad valorem taxes to defendant city of over $5,000, in addition to the privilege tax assessed by defendant city under the laws of Tennessee upon the privilege of doing busi-
39 ness in said city, notwithstanding the leave given by defendant city to operate its plant, within said city under and by its contracts hereinbefore set out.

Your orator further shows that under the statutes of Tennessee no taxes can be levied upon a water plant owned and operated by a municipality, so that if a plant should be built and operated by defendant city in competition with the plant and property of your orator, your orator would be discriminated against in the matter of taxes, and its plant and property subject as it now is to municipal taxes in favor of defendant city, in all probability would be used to aid in the operation of defendant city's water plant.

Seventeenth.

Your orator further shows unto your honors that under chapter 29 of the Acts of 1891 of the General Assembly of Tennessee, defendant city issued $500,000 of five (5%) per cent. bonds, which were used in building bridges, sewers, paving streets, etc., and that under the provisions of said acts of 1891, which is here referred to, the city was required to levy a tax to create a sinking fund sufficient to redeem said bonds, when they would mature about the year 1921, but your orator shows and charges that notwithstanding the heavy taxes which it annually levies and which are wholly insufficient to meet the growing needs of the city and to pay its current expenditures, it has wholly failed to levy the sinking fund tax required by said act of 1891, so that said bonds issued under said act as aforesaid, remain a fixed charge upon the revenue of defendant city, and the property of its tax payers, including that of your orator, without any fund being created as required by said act to pay off and discharge said bonds when they shall mature, therefore your
40 orator charges that defendant city should not be allowed to further issue bonds and incumber its property, and that of your orator, until it shall provide a sinking fund as required by said act of 1891.

Eighteenth.

Your orator further shows unto your honors and charges that it is the declared purpose of defendant city to build a separate and independent water plant as outlined in a general way and recommended by defendant commission in their aforesaid report, and to use the bonds which defendant city claims it is authorized to issue by the result of said election of July 9, 1904, to build such a plant; that your orator is informed and so charges the fact to be, the defendant city and defendant commission is now busily engaged in endeavoring to secure a contract with some person, firm or corpora-

tion to build said plant, and to issue its bonds to pay therefor; and your orator further shows and charges that if the defendant city is permitted to enter into a contract to erect a separate, independent and competing plant, and is permitted to erect such a plant that the result of such action upon the part of defendant city will be the practical confiscation of the plant and property of your orator, will deprive it of its contract rights, hereinbefore set out, and work irreparable injury to it in the loss of the revenue to which it is entitled under said contracts.

Your orator shows unto your honors that it has practically covered the entire ground within the city of Knoxville where there is any demand for a supply of water, and that is is prepared and stands ready and willing to furnish any of the inhabitants within the city of Knoxville, water at reasonable rates whenever there shall be a demand therefor, and that the inevitable result from building
41 a separate and competing plant by defendant city is to deprive your orator of its water consumers now being furnished their water at reasonable rates, and in this way its revenues will be reduced to such a point as your orator fears they will not be sufficient to pay its operating expenses and fixed charges. So that your orator again charges that if defendant city is permitted to consummate the impairment of its contract obligations to your orator, which it has initiated as hereinbefore set out, your orator will suffer irreparable loss and injury, and is remediless therefrom, save in a court of equity.

Your orator further shows unto your honors that if the defendant city is permitted to build a water plant, which is its declared purpose to build, as hereinbefore set out, that thereby the property rights of your orator in the streets of defendant city will be appropriated by said defendant city, and your orator's franchises in said streets under its contracts will be impaired so that your orator's property and franchises will be taken and appropriated by defendant city without just compensation depriving your orator of its property and franchises without due process of law, and also depriving it of the equal protection of the laws:

So that your orator charges that said chapter 153 of the Acts of 1903 of the State of Tennessee and the acts and doings of defendant city thereunder, as hereinbefore set out, including the election of July 9, 1904, are not only unlawful because they impair the obligations of your orator's contracts with defendant city, but they are in contravention of the 14th. amendment to the Constitution of the United States, in that thereby your orator's property and franchises will be taken without due process of law, and your orator will be deprived of the equal protection of the laws.

42 To the end, therefore, that your orator may have that relief to which he is justly entitled in the premises, and which he can only obtain in a court of equity, that the defendants may answer the premises, but not upon oath, the benefit of which is expressly waived, your orator now prays the court:

1. That pending the final litigation upon the subject matter hereof a preliminary injunction or restraining order issue restraining the defendant city, its agents or officials and the defendant Water Works Commission from entering into any contract for the building and construction of a separate, independent and competing plant, and that defendant city, its officials and agents be also enjoined and restrained from issuing the bonds alleged to be authorized by and under the aforesaid act of the legislature of Tennessee, known as chapter 153 of the acts of 1903, Exhibit No. 10, hereto, and by said election held as aforesaid on the 9th. day of July 1904, for the purpose of building and constructing a separate, independent and competing water plant. And that upon the hearing said injunction be made perpetual against both defendants, their officials, agents and attorneys.

2. That the aforesaid act of the General Assembly of Tennessee, being chapter 153 of the Acts of 1903, as aforesaid, be declared void as being in contravention of section 10, of article 1 of the Constitution of the United States, in that it impairs the obligations of your orator's contract rights under the several contracts hereinbefore set out, and especially the terms of July 1, 1882, Exhibit # 3 hereto, the ordinance-contract of October 20, 1899, Exhibit # 8 hereto, and the Lonsdale-Beaumont Water Company contract with the town of West Knoxville, Exhibit # 7 hereto, and the contract of Wheeler & Parks with the town of North Knoxville, Exhibit # 5 hereto.

43 3. That said act of the General Assembly of the State of Tennessee, being chapter 153 of the Acts of 1903, be declared void as being in contravention of the constitution of the State of Tennessee, in that it impairs the obligations of your orator's aforesaid contracts with defendant city, and because it is in contravention of section 17, article 2 of the constitution of the State of Tennessee, providing that no bill shall become a law which embraces more than one subject, that subject to be expressed in the title; and because not signed by the speaker of the senate in open session, and that fact not noted upon the journals of said senate.

4. That the election held on July 9, 1904, as hereinbefore set out, at and by which it is claimed that defendant city is authorized to issue bonds for the purpose of building a separate, independent and competing water plant, be declared void for the reasons hereinbefore stated, and for the further reason that said election was in itself an impairment of the obligations of defendant city under its several contracts with your orator, hereinbefore set out.

5. And if in any way your orator is mistaken in its special prayers it prays for all such other, further and general relief as in equity and good conscience it may be entitled.

6. This is the first application for an injunction or restraining order in this case.

And so may it please your honors to grant unto your orator a writ of subpœna to be directed to said defendants, The Mayor & Aldermen of the City of Knoxville, and the said W. L. Russell,

E. G. Oates, F. J. Callen, J. Allen Smith and J. Y. Johnston,
44 constituting the water works commission of defendant City of Knoxville, requiring them and each of them, at a certain time and under a certain penalty therein to be limited, to appear before your honors in this honorable court, and then and there full, true, direct and perfect answer make to all and singular the premises, but not under oath, which is waived, and to stand, perform and abide such other order, direction and decree as may be made against defendant in the premises, as should seem meet and agreeable in equity.

And so will your orator ever pray.

KNOXVILLE WATER COMPANY,
[SEAL.] By ELBERT WHEELER, Treasurer.

SHIELDS, CATES & MOUNTCASTLE,
Solicitors for Complainant.

STATE OF MASSACHUSETTS, }
County of Suffolk. }

On this the 25th. day of July, 1904, before me personally appeared, Elbert Wheeler, the general manager and treasurer of The Knoxville Water Company, the complainant in the foregoing bill, and made solemn oath that he has read the foregoing bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, as to those matters he believes it to be true.

ELBERT WHEELER.

Subscribed and sworn to before me on this the 25th. day of July, 1904.

HARWOOD S. PALMER,
[SEAL.] Notary Public.

Endorsed: No. 1382. Knoxville Water Company *vs.* Mayor & Aldermen of the City of Knoxville, *et al.* Orig. & inj. bill. Filed Aug. 5, 1904, at 4:45 p. m. J. T. Carter, deputy clerk.

45 EXHIBITS Nos. 1 & 2.

STATE OF TENNESSEE, }
Department of State. }

I, Jno. W. Morton, secretary of the State of Tennessee, do certify that the annexed is a true copy of the charter of incorporation of the Knoxville Water Company and amendment thereto, the original of which is now of record at my office.

In testimony whereof, I have hereunto subscribed my official signature; and, by order of the governor, affixed the great seal of the

State of Tennessee, at the department in the city of Nashville, this 22nd. day of July, A. D. 1904.

JNO. W. MORTON,
Secretary of State.

[SEAL.]

STATE OF TENNESSEE:

Charter of Incorporation.

Be it known that Peter Straub, John M. Brooks, F. M. Loweree, Joseph T. McTeer, Hector Coffin, Alvin Barton, H. H. Ingersoll, and associates, are hereby constituted a body politic and corporate by the name and style of the Knoxville Water Company.

The general powers of said corporation are as follows:

To sue and be sued by the corporate name; to have and use
46 a common seal which it may alter at pleasure, if no common seal then the signature of the name of the corporation by any duly authorized officer shall be legal and binding; to purchase and hold or receive by gift in addition to the personal property owned by said corporation any real estate necessary for the transaction of the corporate business, and also to purchase or accept any real estate in payment or part payment of any debt due to the corporation, and sell realty for corporation purposes; to establish by-laws and make all rules and regulations not inconsistent with the laws and the constitution deemed expedient for the management of corporate affairs, and to appoint such subordinate officers and agents in addition to president and secretary or treasurer, as the business of the corporation may require; designate the name of the office and fix the compensation of the officers and the term of the same, not however, to exceed two years. To make regulations concerning the subscription for, and the transfer of, stock; fix upon the amount of capital to be invested in the corporate business, the division of the same into shares, the time required for the payment thereof by the subscribers for stock, and the amount to be called for at any one time, on the non-payment of which after notice, a right of action shall accrue to the corporation against the stockholder in default.

The first board of directors shall be the corporators applying for, and obtaining this charter, and thereafter the board shall consist of five or more members, at the option of the corporation, to be elected by a majority of the votes cast by the stockholders, either in person or by proxy, each share representing one vote, a majority of the board of directors shall constitute a quorum, and shall fill all vacancies until the next election.

The board of directors shall keep a full and true record of all
their proceedings, and an annual statement of receipts and
47 disbursements shall be copied on the minutes, which shall be subject at all times to the inspection of any stockholder, and the books of the corporation shall show the original and subsequent stockholders, their respective interests, the amount which has been

paid on shares subscribed, the transfer of stock, by and to whom made, and such other transactions as stockholders or creditors may be presumed to have an interest to know.

The amount of unpaid stock due from a subscriber to the corporation, shall be a fund for the payment of any debts due from the corporation, and the transfer of stock by a subscriber shall not relieve him from liability on his subscription till the full amount has been paid.

The corporation shall have the right and power to borrow money and issue notes on bonds, upon the faith of the corporate property, and also to execute a mortgage or mortgages, as further security for re-payment of money thus borrowed.

The business of said corporation shall be, to establish and construct water-works, in or near the city of Knoxville, Tennessee, and it shall be the duty of said company to build, furnish and equip water-works of sufficient capacity to furnish the corporate authorities and inhabitants of said city with water.

To enable the company to establish such works, it is hereby authorized to lay down pipes through the streets, lanes and alleys of said city, in such manner, however, as to produce the least possible inconvenience to the city or its inhabitants, or to travelers, and to take up pavements and side-walks, provided they shall repair the same with the least possible delay.

The company shall have power, and are hereby authorized, to bring into said city a sufficient supply of water by means of pipes or tanks, or in any other way, and to construct reservoirs
48 for the reception thereof, and to supply with water the inhabitants of said city and the environs thereof, and all who may be along the line of the company's pipes, and of erecting hydrants or fire-plugs within said city, and to contract with said inhabitants, and with the corporate authorities of said city, or any incorporated companies, for the use of said water, and charge such price for the same as may be agreed upon between said company and said parties, and consumers shall be subject to all such reasonable rules and regulations respecting the use and waste of said water, as the directors of the company may, from time to time, prescribe.

The works and operations of said company shall be so conducted and managed that no annoyance shall accrue therefrom to the health and comfort of the inhabitants of the city, and nothing in this charter shall be so construed as to absolve the company, its officers or agents from any legal proceedings to restrain or abate any nuisance arising from such water-works or operations.

If any person or persons shall injure or destroy any portion of the water-pipes or other property of said company, or shall wilfully open a communication into the street, or into other water-pipes, or let on water after it has been stopped by the company, such person or persons shall be liable for all damages sustained by such proceedings, and also to a penalty not exceeding five hundred dollars, upon conviction before a court having jurisdiction of the offense.

If any person or persons shall take, or use any water of said company for domestic or other purposes without having previously contracted for the same with the officers of said company, such person or persons shall forfeit and pay to the said company the sum of fifty dollars, to be recovered before any justice of the peace in the same manner as other debts are collected by law; provided that nothing herein contained shall be construed to compel the inhabitants of said city to use the water so introduced by said company, or to prevent them from using water obtained in any other way.

And if any person or persons shall wilfully corrupt or permit anything to run into, or fall into, any syream or reservoir, from which the company shall take water to be introduced in said city which shall corrupt the same or render it unpalatable, unwholesome or unfit for domestic or manufacturing use, or for the supply of stationary or locomotive engines, or shall bathe in any dam or reservoir, lead or enter any animal into the same, he shall, on conviction thereof, before any justice of the peace of the civil district in which said water is situated, pay a fine of not less than ten nor more than fifty dollars, one-half to the use of the informer and the other half to the use of said company, and shall moreover remain liable to said company for all damages.

A failure to elect officers at the proper time shall not dissolve the corporation, but those in office shall hold until the election, or appointment and qualification, of their successors.

By no implication or construction shall said corporation be deemed to possess any powers except those hereby expressly given, or necessarily implied from the nature of the business for which the charter is granted, and by no inference whatever shall said corporation possess the power to discount notes or bills, deal in gold or silver coin, issue any evidence of debts as currency, buy any sell any agricultural products, deal in merchandise, or engage in any business outside the purpose of the charter.

The right is reserved to repeal, annul or modify this charter, if it is repealed, or if amendments proposed, being not merely auxiliary but fundamental, are rejected by a vote representing more than half of the stock, the corporation shall continue to exist for the purpose of winding up its affairs, but not to enter upon any new business. If the amendments or modifications, being fundamental, are accepted by the corporation as aforesaid, in a general meeting to be called for that purpose, any minor, married woman or other person under disability, or any stockholder not agreeing to the acceptance of the modification, shall cease to be a stockholder, and the corporation shall be liable to pay said withdrawing stockholders the par value of their stock, if it is worth so much; if not, then so much as may be its real value in the market on the day of the withdrawal of said stockholders as aforesaid: Provided, That the claims of all creditors are to be paid in preference to said withdrawing stockholders.

We, the undersigned, apply to the State of Tennessee, by virtue of the laws of the land, for a charter of incorporation, for the purposes and with the powers declared in the foregoing instrument.

Witness our hands the 27th day of December 1881.

PETER STAUB.
JOHN M. BROOKS.
F. M. LOWREE.
JOSEPH T. McTEER.
HECTOR COFFIN.
ALVIN BARTON.
H. H. INGERSOLL.

51 STATE OF TENNESSEE, }
City of Knoxville. }

I hereby certify that leave to operate under the foregoing charter of incorporation has been duly obtained from the corporate authorities of said city.

Witness my hand, seal of office, this 30th day of December 1881.

GEORGE M. WHITE, Recorder.

STATE OF TENNESSEE, }
Knox County. }

Personally appeared before me J. F. J. Lewis, clerk of the county court of said county, Peter Staub, John M. Brooks, F. M. Lowrie, Joseph T. McTeer, Hector Coffin, Alvin Barton and H. H. Ingersoll, the within named bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained.

Witness my hand and official seal at office in Knoxville, Tennessee, this 27th day of December, 1881.

J. F. J. LEWIS, Clerk.

STATE OF TENNESSEE, }
Knox County. }

REGISTER'S OFFICE.

Received for record the 27th day of December A. D. 1881, at 11 o'clock a. m. and recorded in Book "V" vol. 3d, page- 495 to 498, noted in Note Book "B" page 178.

JOHN J. MARTIN, D. Register.

52 I, D. A. Nunn, secretary of state of Tennessee do certify that the charter with certificates attached, the foregoing of which is a true copy, was this day registered and certified to by me, this January 4th. 1882.

D. A. NUNN,
Secretary of State.

STATE OF TENNESSEE:

Amendment to the Charter of Incorporation of the Knoxville Water Company.

Be it known that on the 4th. day of January 1882, a charter of incorporation was granted by the State of Tennessee constituting certain persons therein named, a body politic and corporate by the name and style of *The Knoxville Water Company* with the powers, privileges, conditions and restrictions therein stated (which charter of incorporation was registered in Book "V," vol. 3, pages 495–498 in the register's office for Knox county Tennessee and in Corporation Record Book "G" page 34 in the office of secretary of state of Tennessee), and under and by virtue of said charter the said Knoxville Water Company was afterwards duly organized and a president, secretary and board of directors elected; and at a meeting of the directors and stockholders of the said Knoxville Water Company held July 25th. 1882, at which all officers and stockholders were present, it was unanimously resolved that an amendment be sought to said charter of incorporation of the tenor hereinafter stated.

Now therefore, we the undersigned, comprising the directors and stockholders of the Knoxville Water Company, apply to the State of Tennessee by virtue of the general laws of the land, for an amendment to said charter of incorporation for the purpose of imposing the following restrictions and limitations upon the exercise
53 of the power thereby conferred, to-wit:

XVII. This corporation is prohibited from issuing bonds in excess of the sum of one hundred and twenty-five thousand dollars (par value) for the period of five years next following July 1st. 1882, and after that time in excess of twenty-five thousand dollars additional, and the indebtedness of said corporation by bond, shall not at any time exceed the sum of one hundred and fifty thousand dollars. All bonds issued in violation of this provision as to said corporation, shall be utterly null and void: shall not be obligatory upon said corporation *a* as a debt, nor, in any way constitute a charge upon its property, real or personal, but shall be only the personal and individual liabilities and obligations of the officers and stockholders actually participating in such wrongful issuance of the same; provided, that nothing herein contained be construed or understood as in any way prohibiting or restraining said corporation from altering, enlarging, or adding to its capital stock already subscribed.

Witness our hands the 25th. day of July 1882.

F. M. LOWREE.
ALVIN BARTON.
S. E. COOKE.
PETER STAUB.
SAM McKINNEY.

I, C. C. Nelson, recorder of the city of Knoxville, certify that the board of mayor and aldermen, of the city of Knoxville, have by resolution of said board, approved the foregoing amendment to the charter of incorporation of the Knoxville Water Company, and have granted leave to operate thereunder to said company.

Witness my hand and seal of office, this July 25th. 1882.

C. C. NELSON, Recorder.

54 STATE OF TENNESSEE, }
Knox County. }

Personally appeared before me J. F. J. Lewis, clerk of the county court of Knox county, S. E. Cooke, F. M. Lowree, Peter Staub, Alvin Barton and Sam McKinney, the within named bargainors, with whom I am personally acquainted, and who acknowledged that they executed the foregoing instrument for the purposes therein contained, and it is certified for registration accordingly.

Witness my hand and seal of office at Knoxville, Tennessee, this July 25th. 1882.

J. F. J. LEWIS, Clerk.

STATE OF TENNESSEE, }
Knox County. }

REGISTER'S OFFICE.

Received for record the 25th. day of July, A. D. 1882, at 4½ o'clock p. m., and recorded in Book "W" vol. 3rd., pages 570–571, noted in Note Book "B" page 193.

JOHN J. MARTIN, D. R.

I, D. A. Nunn, secretary of state of Tennessee, do certify that the charter with certificates attached, the foregoing of which is a true copy, was this day registered and certified to by me, this July 27th. 1882.

D. A. NUNN,
Secretary of State.

Endorsed: Copy charter of incorporation of Knoxville Water Co. and am'dm't. Registered in office of secretary of state, 4 day of January 1882, and 27th. July 1882. Received fee, $10.00 for copy. Total, $10.00. Jno. W. Norton, secretary of state.

Endorsed: No. —. Knoxville Water Co. *vs.* Board of Mayor & Aldermen of Knoxville, *et al.* Exhibits Nos. 1 & 2. Filed Aug. 5, 1904, J. T. Carter, deputy clerk.

55 EXHIBIT No. 3.

Articles of Agreement for the Construction of Water Works for the City of Knoxville.

This memoranda of an agreement, made and entered into this 1st. day of July, 1882, by and between the Knoxville Water Company of said city, in the State of Tennessee, party of the first part and the board of mayor and aldermen of the city of Knoxville, Tennessee, party of the second part, witnesseth:

That the said company in order to supply the said city with water for fire protection and public sanitary and domestic purposes does hereby agree:

I.

1st. That it will erect and establish upon and on the land acquired by said city for that purpose a sistem of water works with reservior, and all proper and necessary mains, pipes, hydrants, machiney, buildings and other appurtenances and incidents necessary and sufficient to supply said city with water (to be taken from the Tennessee river at the site purchased by the city for that purpose) for all purposes hereinafter stipulated, the said water works and every part thereof to be of the best standard material and constructed in a proper and good workmanlike manner, not inferior to or of less capacity but in every way as good, ample and substantial and of equal dimensions as contemplated and required by the specifications schedules, drawings, maps and details prepared for the city aforesaid by one Moses Lane; nor shall any of the mains, pipes, hydrants, buildings, machinery, pumps and other appurtenances be of
56 quality inferior to that contemplated by said plans and specifications, schedules, drawings, maps and details, a copy of which is now on file in the office of the city engineer of said city, and is hereby referred to and made part of this agreement.

2nd. The reservoir shall be built on the site indicated in the said Moses Lane map, and shall have a capacity of three millions, two hundred thousand gallons of water, as per specifications of said Moses Lane.

3rd. Said company will erect and establish seventy-five fire hydrants, twenty of which shall have double nozzles, with threads cut to suit the hose connections now in use in the city aforesaid, the same to be located on the line of the main pipes, at the points and along the curb lines of said city, as indicated by a map of the city drawn by the city engineer and prepared for water-works purposes, by Moses Lane, which provides for the placing of sixty-three fire-hydrants, the remaining twelve hydrants to be placed at such other points along said curb lines as may be determined by the city previous to the laying of the pipes, which are to supply the hydrants with water; and said map is also hereby made a part of this agree-

ment for the purposes mentioned. And the said company will erect for the use of said city from time to time, as the city may direct and at such points as the city may designate, as many additional hydrants as the necessity of the city may require, provided, however, that any additional hydrants thus erected shall not be located at a distance exceeding six hundred feet from an existing hydrant or from each other.

4th. And the said company guarantees that the said water works and fixtures throughout shall be of first class material as hereinbefore stated, and capable of supplying two millions gallons of
57 water every twenty-four hours, and shall afford an uninterrupted daily supply to said city, of such quantity thereof as shall be required (not exceeding the amount above specified, except in cases of unavoidable accident or injury to the works of the company, which shall be repaired in the shortest practicable time.

5th. Said company will furnish water free of charge, except the rental of hydrants as herein stipulated) from the hydrants for the sprinkling of the streets and flushing of gutters and sewers along, on and under such streets of said city as are or may be curbed, guttered or sewered. Provided, that in flushing not more than two of said hydrants shall be opened and used therefor at one time; also said company will furnish free, through said hydrants, water for all purposes of the fire department and for supplying the city hall buildings and office and prison therein.

Sprinkling streets.

Purposes of fire dept. city hall bldg. & prisons therein.

6th. Said company hereby agrees to purchase from said city the property already acquired by the city for the purpose of erecting water-works, including lands, plans, specifications, drawings, maps, etc. etc., and to pay therefor within thirty days from the execution of this agreement and before commencing the construction of said works, the sum of seven thousand eight hundred dollars.

7th. Said company will supply private consumers with water at a rate not to exceed five cents per one hundred gallons, provided, however, which is expressly understood that the entire cost of introducing from the mains into
58 private premises including cost of meter when used, shall be borne by the parties introducing or ordering the same, and that no main or distributing pipe shall be tapped by any person, except a plumber licensed for that purpose by said company.

5c. per 100 gals.

Plumber licensed for that purpose by said company.

8th. The work of construction shall be commenced within thirty days from the execution of this agreement and shall be pushed forward to completion with all reasonable expedition so as to be in operation and prepared to supply the city, water, in the quantity

hereinbefore stipulated, within twelve months after the time specified for commencing work, provided, however, that if the company shall at any time during said period of twelve months be delayed from working or restrained therein by injunction or other legal process or order, sued out or obtained by the city, or any of its citizens, or by any ordinance of said city, the time during which the company may be restrained or delayed shall not be included or reckoned in computing said period above fixed for completing said works.

9th. Said company will at its own expense repair, replace and restore all the streets, lanes, alleys, ways and sidewalks in, through or under which it may lay its mains, pipes and other appurtenances, necessary for the erection and maintenance of the works with all convenient and reasonable expedition and as fully and completely as before excavation, provided, that when any part of any street, lane, alley way or side-walk is used for making excavations or such other work is done thereon as is necessary for the erection and maintenance of said water-works, it shall be done in such manner as to give the least inconvenience to the inhabitants of the city.

To restore all streets in as good condition as before excavation.

59

And said company further binds itself to observe all precautions necessary for preventing accidents, whether the same are prescribed by ordinance or not. And the said water company covenants to indemnify and save harmless the said party of the second part against all damages, which may be adjudged against said party of the second part for any injuries to person or property accruing through the negligence or want of due care and precaution of the company in opening, keeping open, lighting or closing excavations or placing or removing obstructions in or upon the streets of the city of Knoxville, provided, that the said party of the second part shall in all cases make diligent and proper defense to any suits that may be brought against the city for injuries accruing as aforesaid, from the negligence of said company, and shall not compromise or submit to arbitration any such suit or a use without the express consent of said company.

Suits, accidents, damages, etc.

10th. Said company will maintain the water-works herein stipulated to be built, in such condition as may be sufficient and necessary to enable it to comply with its undertakings herein set forth, for the period of thirty years from January 1st. 1883, unless the city shall become the owner of the same within that period, as may be done in the manner hereinafter stipulated.

30 yrs. from 1st Jan'y. 1883.

11th. And said company hereby agrees forthwith to take steps to so amend its charter and within one month so to amend the same as to prohibit it from issuing bonds in excess of

To amend charter.

one hundred and twenty-five thousand dollars for the period
60 of five years from the execution of this agreement and after that time from issuing additional bonds in excess of twenty-five thousand dollars; and it is agreed that the indebtedness of the company by bond shall not exceed the amount of one hundred and fifty thousand dollars, only one hundred and twenty-five thousand of which can be issued within the same period of five years.

12th. And the said water company will at its own proper expense construct and establish in connection with the water works, a system of telegraphic fire alarms of such quality and efficiency as that in general use in cities consisting of two alarm boxes in each of the present eight wards of the city, located at such points as the city shall designate with proper telegraphic connections with a central station, which the company will establish at the city hall, the central station having proper telegraphic connections with the pump works of the company, so that the additional quantity of water required may be supplied by the engine—the main leading to the site of the fire and the central station may be properly connected with the engine house of the city.

And the said city in consideration of the premises on its part covenants and agrees:

1st. To grant and guarantee to said company all right to enter upon any and all streets, squares, lanes, alleys under the control of the authorities of said city, for the purpose of laying pipes, mains, etc., and making repairs of said works, to take up pavements and sidewalks on the same and to make such excavations therein as may be convenient or advantageous and necessary for the purposes aforesaid; and the right and privilege to lay pipes, &c., on, across, or through bridges and culverts of the city for conducting and distributing water for public and private uses:

61 Provided, however, that the company shall perform their agreement as set out in section nine, hereinbefore written; and the city does also further grant the right of way through all public grounds and places controlled by it to the contractors, free of cost, so far as the same may be necessary or advantageous for the erection, construction and maintenance of the said water works.

2nd. The city further obligates itself not to grant to any other person or corporation, any contract, or privilege to furnish water to the city of Knoxville, or the privilege of erecting upon the public streets, lanes, or alleys or other public grounds for the purpose of furnishing said city or the inhabitants thereof with water for the full period of thirty years from the 1st day of August A. D. 1883, provided the company comply with the requirements and obligations imposed and assumed by them under and by virtue of this agreement.

3rd. The city further covenants and agrees to pay to said company for rent of the seventy-five hydrants hereinbefore stipulated to be erected, fifty dollars each per annum, payable in quarterly installments on the last day of each quarter, beginning on the day

upon which the city shall commence receiving a supply of water from said works, and for any additional hydrants erected for the use of the city it will pay in the same manner at the rate of not more than fifty dollars each per annum.

4th. The city will by ordinance give to such company such protection against injury, whether by negligence or unwarranted or malicious interference or interruption of any kind, as the legislative department of the city may lawfully do under its charter and the laws of the land.

5th. And upon payment by said company of said sum of seven thousand, eight hundred dollars, as provided hereinbefore in
62 section six, said city binds itself to execute to the company a proper deed with covenants of seizure, freedom from encumbrances, further assurance and general warranty, to all property conveyed to the city for water-works purposes by the following persons, to-wit: First by Catharine and Mary Shetterly, by deed dated Sept. 16, 1879, registered in Book "T" vol. 3rd. page 50 register's office of Knox county, Tennessee. Second by W. A. Henderson and Peter Staub, by deed dated Sept. 8th. 1879, registered in same book, page 52. Third, by S. T. Atkin, by deed dated Sept. 8th. 1879, registered in same book page 53. Fourth, by A. S. Prosser and others by deed dated Sept. 15th. 1879, registered in same book page 48; fifth, by H. W. Hall, by deed dated Sept. 8th. 1879, and registered in same book, page 54, and also all rights of way for the use of the water works which may have been secured by the city therefor during the year 1879.

6th. And the said board of mayor and aldermen in view of the benefit and advantage accruing to the city and its citizens from the construction of said works and the erection of said hydrants, covenants and agrees with the said water company to pay in addition to the annual rent of fifty dollars, as hereinbefore provided, and as an additional annual rent for the said seventy-five hydrants, a sum equal to that which, under the laws of the State and the ordinances and resolutions of the city would be annually assessed as taxes for city purposes and uses on property of the same kind, quantity and value as that owned by the said water company within the corporate limits of the city of Knoxville.

Provided, that the said additional annual rental shall only be paid for the term of five years next following 1st. of August, 1894, and no longer.

III.

Expiration 15 yrs. city can buy.

1st. And it is hereby mutually
63 agreed and understood that at the expiration of fifteen years from the time hereinbefore fixed for the completion of said water-works, the city shall have the right, upon giving one year's notice of such purpose and intention, to purchase from said company the water works herein provided for, and all the prop-

erty, rights, franchises and privileges thereto belonging by negoti-tions if thus the terms can be agreed upon, or if not, then at any time for a consideration to be fixed and determined by appraisers; and if not purchased at the end of fifteen years, the said works, property and franchises, rights, privileges, etc., may upon the same terms and conditions, and in the same way be purchased by the city at the expiration of each and every year thereafter. But in no case shall such right or purchase exist or be exercised unless due notice thereof be given by the city to the company one year before the expiration of the period aforesaid or either of them. And in the event of such notice and the failure of the parties hereto to agree upon the terms and conditions of sale, the price to be paid and other matters necessary to close the same, then in that event each party shall choose two disinterested persons non-residents of said city and also of the county of Knox in the State of Tennessee, and the four thus chosen shall select a fifth person likewise disinterested and a non-resident of Knox county, and said five persons thus chosen shall constitute a board af appraisers and having accepted their appointment, shall each take and subscribe an oath to act fairly, honestly and impartially in the premises, and having so done, shall proceed to value and appraise the waterworks aforesaid, and all the rights, privileges, franchises, easements and other property appurtenant to said waterworks belonging to said company, and also to ascertain, determine and declare the amount of indebtedness of said company, or of which its successors or assigns would become liable, and in view of such indebtedness shall decide, determine and award the net value of said water works and all other property of said company appurtenant thereto aforesaid. And such award of said board of appraisers or that of a majority thereof — be final and conclusive upon the parties. And when the purchase price so fixed and determined shall be paid to said company by the city, then said company shall and will forthwith by proper deeds of conveyance, assign, transfer set over and convey to said city of Knoxville, said water works, and all the rights, franchises, easements, privileges and other property appurtenant thereto owned by said company at the date of such appraisal and award.

Each to choose 2 parties.

64

2nd. And it is further understood and agreed by and between the said parties that the said Knoxville Water Company shall not transfer, set over or assign the contract hereinbefore made for the construction of water works to any company, corporation or individual whatsoever; provided, that nothing herein contained shall be construed as prohibiting or restraining the said Knoxville Water Company from mortgaging or conveying in trust the lands, easements, estate, rights, privileges and franchises herein granted and agreed and contracted to be granted for the purpose of securing the bonded indebtedness of said company (subject as to the amount to the provisions hereinbefore stated) as prohibiting or restraining said water

company from subletting or agreeing with sub-contractors for the construction of any portions of the said water-works, or agreeing with any person or corporation for furnishing material or apparatus therefor.

65 3rd. And it is further mutually understood and agreed by and between the company and the city, that a penalty bond this day executed by the Knoxville Water Company as principal and Sam McKinney as surety, to the board of mayor and aldermen of the city of Knoxville, conditioned in the sum of twenty-five thousand dollars, for the construction at and within the limits of the city of Knoxville—a system of waterworks in accordance with the plans and specifications of Moses Lane, or in case of failure to pay, satisfy and discharge all such damages as said board may sustain in consequence of said failure is hereby referred to and made a part of this agreement.

4th. And it is further mutually understood and agreed by and between the said company and the city, that article one of section one of this agreement be amended so as to require that the system of water-works hereinbefore provided for shall be built and constructed in accordance with the plans, specifications of Moses Lane with a single exception, that is to say: Instead and in place of the stand-pipe for fire purposes, at the reservoir as required and contemplated by the plans and specifications of Moses Lane, the said company shall construct and establish at the reservoir a system of by-pass pipes by means of which the water in case of fire may be directed into the proper main by the direct pressure of the engine of the works.

In testimony whereof, the said Knoxville Water Company, has caused this agreement to be signed on its behalf by its president and secretary, and the said board of mayor and aldermen of the city of Knoxville, has caused this agreement to be signed on its behalf by the mayor and recorder of the city of Knoxville, and has

66 affixed hereto its common seal on the day and year above written.

(Signed) S. E. COOKE,
President Knoxville Water Co.
ALVIN BARTON,
Sec'y *pro Tem.*
R. S. PAYNE, Mayor.
C. C. NELSON, Recorder.

{ Seal Mayor & Aldermen of the City of Knoxville, Tenn., Founded 1792. }

KNOXVILLE, TENNESSEE:

Bond of Knoxville Water Company, 1882.

Filed July 1, 1882.

Know all men by these presents, that we, the Knoxville Water Company, a body politic and corporate as principal and Sam McKinney, a resident of Knoxville, Tennessee, as surety are firmly bound and held unto the board of mayor & aldermen of the city of Knoxville, in the penal sum of twenty-five thousand dollars.

Now the condition of this bond is such that—the said Knoxville Water Company shall within the period of twelve months from July 1, 1882, construct, erect and establish at and within the corporate limits of the city of Knoxville, Tennessee, a system of water works in accordance with the plans and specifications of Moses Lane, or in case of failure therein, shall pay, satisfy and discharge all such damages as the said board of mayor & aldermen as a corporation, shall incur or sustain in consequence of such failure, then and in that event, this obligation shall be null and void, otherwise to remain in full force.

67 In testimony whereof, the said Knoxville Water Company has caused the signature of its president and secretary to be hereto affixed in its behalf, and the said Sam McKinney has hereunto set his hand this July 1st, 1882.

(Signed) S. E. COOKE,
President Knoxville Water Co.
A. BARTON,
Sec'y *pro Tem.* of Knoxville Water Co.
SAM McKINNEY, Surety.

{ Seal Mayor and Aldermen of the City of Knoxville, Tennessee, Founded 1792. }

Filed July 1, 1882.

STATE OF TENNESSEE, }
City of Knoxville. }

I, C. C. Nelson, recorder of said city, do hereby certify the foregoing to be a full, true and perfect copy of the contract it purports to give, made by the city with the Knoxville Water Company, together with the bond of said company, as the same appears of record on the minutes of the mayor & aldermen of said city now in my office.

Given under my hand at office in Knoxville, Tenn. July 21st, A. D. 1904.

[SEAL.] C. C. NELSON, Recorder.

Endorsed: Knoxville Water Co. *vs.* City of Knoxville, *et al.* Exhibit No. 3. Filed Aug. 5, 1904. J. T. Carter, deputy clerk.

6—123

68 EXHIBIT No. 4.

KNOXVILLE, TENN., Thursday, Feb'y 9th, A. D. 1888.

Hon. Mayor Condon issued a call for a meeting of the board of mayor and aldermen, which notice was served on every one of the members of the board who was reported absent from the city.

In answer to said call there appeared at the city hall at four o'clock p. m., Aldermen Selby, Barry, Hockenjos, Boyd, (Condon) Jones, Albers, Perry and McDonald. Also present City Attorney J. W. Sneed, Esq., Chm. Young, Mr. Kern and Fulcher of the board of public works. Also J. W. Yoe and Mayor Gratz, attorneys for the city in the water works case. Mayor Condon called the board to order, and after roll call, read his message as follows:

KNOXVILLE, TENNESSEE, February 9th, 1888.

To board of aldermen.

GENTLEMEN: You have been called together to consider a proposition of compromise in settlement made by the water works company to this board. To consider a resolution empowering and authorizing the mayor to make arrangements relative to our finances and appoint a committee to investigate the extension of Gay street and to consider the ordinances introduced by Aldermen Hockenjos in second reading in reference to minors.

Very respectfully,
(Signed) MARTIN J. CONDON.

69 City attorney being called, read the following:

"Whereas, there is and has been pending between the Knoxville Water Co. and the board of mayor and aldermen of the city of Knoxville, litigation over a contract made between said parties on the 1st day of July 1882,

And whereas, the Knoxville Water Co. has submitted a proposition to settle all differences between the parties to said contract, which proposition is in the words and figures following, to-wit:

KNOXVILLE, TENN, Feb'y 9th, 1888.

To the mayor and aldermen of Knoxville, Tenn.

GENTLEMEN: Pursuant to an interview the representatives of the Knoxville Water Co. have had with the mayor and the members of the board of public works, and for this purpose of settling and compromising all differences between the Knoxville Water Co. and the city, we submit the following proposition of settlement:

1. The city is to pay the Knoxville Water Co. in cash all the hydrant rental due to Jan'y 1st, 1887, not heretofore paid, with interest from the dates it fell due.

2. The city will give the Knoxville Water Co. an obligation for all rental of hydrants accrued since Jan'y 1st, 1887, which obliga-

tion shall be paid out of the first monies that can be made available for that purpose.

3. The Knoxville Water Co. will surrender and convey to the city, any supposed claim it has to the telegraph fire alarm put in by the Knoxville Water Co.

4. The Knoxville Water Co. shall not be under any obligation to repair, erect, maintain or care for a telegraph fire alarm system for the city of Knoxville and the city shall from this date look
70 after and bear all the expenses that may be in any way connected with the maintenance, care or repairs of any telegraph fire alarm it may erect. It being intended that the Knoxville Water Co. shall in no way be responsible for a telegraph fire alarm of any kind, as provided in the contract between the city and the Knoxville Water Co.

5. The Knoxville Water Co., upon its part, agrees to pay over to the board of public works, at once, three thousand seven hundred and fifty dollars of the obligation to be given for the hydrant rentals falling due for the year 1887, for the purpose of assisting the city in erecting a telegraph fire alarm.

6. The hydrant rental shall go on and be paid as provided in the contract between the city and the water Co., at the rate of fifty dollars per year for each hydrant up to one hundred and the rental of each hydrant over one hundred shall be at the rate of forty five dollars per year, payable quarterly as provided in the original contract above alluded to.

7. The suits now pending against the city are to be dismissed and the city will pay all the costs accrued.

Respectfully submitted,

KNOXVILLE WATER COMPANY,
By R. N. HOOD, Pt.

(Under seal of Knox. Water Co.)

Endorsed: Proposition Knoxville Water Co. to board of mayor and aldermen.

Printed: Taylor & Hood, attorneys & counsellor-, Knoxville, Tennessee.

Immediately after the reading of the foregoing ptoposition Aldermen Hockenjos offered the following:

Therefore, be it resolved by the Board of Mayor and Aldermen of the City of Knoxville, that the said proposition is hereby
71 accepted, and the mayor and recorder and the board of public works are hereby directed to carry the same into effect.

Aldermen Albers asked to hear from the board of public works. Ch'm- Young stated the above was the best proposition that the Knoxville Water Co. had offered the city, and he thought it the best settlement that could be made for the city.

Aldermen Albers seconded motion to adopt above resolution.

J. W. Yoe, Esq., and Maj. Gratz being present, were called and as they had acted as counsel for the city in the water works suits against the city, after giving a history of the case decided by the supreme court of Tennessee, stated that taking everything into consideration, the proposed settlement was in their opinion the best that could be made under the circumstances. In fact they had advised his honor to accept the proposition $25000 from the water Co. for fire alarm system, but his honor had succeeded in getting a better offer from said Co. for the city, which they thought the board could not do better than to accept at once, and get rid of the lawsuits now under way.

The question was called, on motion of Aldermen Hockenjos to accept said proposition and pass above resolution. The roll being called, Aldermen Selby, Barry, Hockenjos, Boyd, Jones, Albers, Perry and McDaniel voting aye. Mayor Condon declared the contract adopted and resolution carried.

I, C. C. Nelson, recorder of the city of Knoxville, do hereby certify the foregoing to be a full, true and perfect copy of the proceedings of the board of mayor and aldermen of said city which it purports to give, as the same appears of record in my office in
72 the minutes of said board, bearing date Feb'y 9, 1888.

Given under my hand, July 21st A. D. 1904.

[SEAL.] C. C. NELSON, Recorder.

Endorsed: No. 4. Knoxville Water Co. *vs.* City of Knoxville, *et al.* Exhibit No. 4. Filed Aug. 5, 1904. J. T. Carter, deputy clerk.

EXHIBIT No. 5.

At the regular meeting of the mayor and aldermen of North Knoxville held Saturday April 18th, 1891, amongst other proceedings of said board an ordinance was passed on its last reading and became a law, in words following:—(See Minutes 358 to 367 inclusive.)

Ordinance.

An Ordinance to Provide for a Supply of Water to the Town of North Knoxville and Its Inhabitants, and to Authorize the making of a Contract for the Same with Wheeler and Parks.

SECTION 1ST. Be it ordained by the town council of North Knoxville, That in consideration of the public benefit to be derived therefrom, the right and privilege is hereby granted, until June 3rd, 1913, unto Wheeler and Parks of Boston in the Commonwealth of Massachusetts, their successors and assigns, (they being hereinafter designated as grantees) of erecting, maintaining and operating a system of water works, and to extend the mains, and
73 to enlarge the plant at their pleasure in accordance with the

terms and provisions of this ordinance, and of using the avenues streets, alleys, bridges, public squares, and all public grounds within the corporate limits of the town of North Knoxville as they now exist, or may hereafter be extended or created, for the purpose of laying pipes, mains and other conduits, and erecting hydrants and other apparatus for conducting and furnishing an adequate supply of good, clear and wholesome water, suitable for domestic and manufacturing purposes, to the town of North Knoxville and its inhabitants for public and private uses subject to all reasonable requirements of the town council of North Knoxville; and for making repairs to said system from time to time during the period in which this ordinance and contract hereinafter authorized are in force.

The privileges hereinafter granted, so far as they relate to furnishing water for hydrant service, to be exclusive so long as the total number of hydrants rented hereunder does not exceed fifty (50).

SECTION 2ND. Be it further ordained, That the said grantees shall exercise the greatest care and diligence in the use of said avenues, streets, alleys, bridges, and public places and shall cause no unnecessary obstructions of or interruption to, the public travel over or upon the same, or any permanent injury to, or interference with any pipes, mains, or sewers, which may be lawfully located beneath the surface thereof, now, or at the time any of the extensions
74 herein provided for are made. Said grantees shall take every precaution to provide against injury to any person or property by reason of the exercise of the rights and privileges hereby granted, and shall cause all excavations and obstructions to be properly lighted at night, and take all necessary precautions for the prevention of accidents, whether prescribed by ordinance or not, and shall restore all avenues, streets, alleys and public places, when worked or used, to their former condition as near as may be without unnecessary delay, and at the least inconvenience to the inhabitants of the town of North Knoxville; and the said grantees shall indemnify and save the town harmless from any and all damages that may be recovered against it by reason of their negligence while engaged in constructing or repairing said works within the corporate limits of said town of North Knoxville or by reason of any defect therein.

SECTION 3RD. The water to be supplied under the contract hereby authorized, shall be from the Tennessee river, or from other source equally suitable, and shall be supplied from the same system that supplies the city of Knoxville, or otherwise as said grantees shall elect (and said grantees shall adopt, within two years from the time the contract takes effect, all necessary and proper means of filtering, or otherwise clarifying the same, so as to render it pure and wholesome), and it is hereby stipulated that the water to be supplied hereunder shall be taken from a point above Williams creek, whenever the city of Knoxville shall be so supplied.

75 SECTION 4TH. The pipe to be laid hereunder shall range from four (4) inches to twelve (12) inches interior diameter, or larger. Not more than one hydrant shall be set upon any section

of four (4) inch pipe, in which case said section shall be supplied at each end through larger pipes, and all pipes shall be of ample size, and so arranged as to furnish a full supply of water under the minimum pressure, and to meet the tests herein provided. All pipes to be of cast iron and tested at the foundry to a pressure of three hundred (300) pounds to the square inch, and thoroughly coated in accordance with the most approved method employed in modern practice in the coating of water pipes.

SECTION 5TH. The valves shall be located at such points as will admit of not over three blocks being isolated from the balance of the system in case of needed repairs or extensions.

SECTION 6TH. The hydrants shall be frost proof, double nozzle of most approved pattern, with hose tips fitted to connect with such hose couplings as the town council of North Knoxville may adopt.

SECTION 7TH. The grantees will lay mains wherever, and to such extent, as may be required by order of the town council of North Knoxville, be the same more or less, and will set thereon fire hydrants of approved pattern at the rate of one hydrant for each six hundred feet of pipe so ordered and laid; said hydrants to be located at such
76 points on said pipe as said town may elect; and said grantees will supply the same with water free of charge (for the purposes recited in section 13) until June 1st. 1892, and thereafter until said company shall have clarified by filteration, precipitation or otherwise, the water to be supplied hereunder.) Thereafter the rate to be paid by said town of North Knoxville for the use of said hydrants shall be forty-five ($45.00) dollars, each per annum, payable quarterly, but shall not at any time exceed the rate paid by the city of Knoxville for hydrant service, upon extension made within the limits of the said city of Knoxville.

SECTION 8TH. And the said grantees further agree to improve the works and increase the plant from time to time to any extent which may be needful to enable them to furnish an ample supply of good potable water as provided in section 3, for public and manufacturing, and domestic use of the entire district of North Knoxville, which supply shall not be less than fifty (50) gallons per head per day, if required for the entire population, including any increase thereof, it being provided that there shall be no unnecessary waste; and to furnish each and every suburb in the vicinity of North Knoxville with water upon no less favorable terms than shall from time to time govern its use in the city of Knoxville.

SECTION 9TH. The water to be furnished private consumers, shall be charged for at not exceeding the rates contained in the following schedule:

77 **Tariff of Water Rates.**

Annual Rates

Private dwellings occupied by one family—

Four rooms or less	*6.00*
Five "	7.00
Six " more	8.00 and upwards.
Baths—Bath tubs, private	5.00
Public	10.00
Water closets—Private	5.00
Public	10.00
Urinals—Private	5.00
Public	10.00
Stores—According to occupation and use	8.00 and upwards.

Rooms over store, according to occupant.

Offices in buildings where water is generally used	8.00
Banks	8.00
Insurance offices	8.00
Saloons—Special.	
Photograph galleries	15.00 to 50.00
Dentists' offices	10.00 to 20.00
Hotels and boarding houses—	

Hotels and boarding houses—special or meter rates.

Stables—Livery and sales stables (hose privilege extra) per stall	2.00
Private stables—per stall	2.00
Bakeries—per each barrel of flour used daily	5.00
Printing offices—exclusive of engine	10.00 to 25.00
Steam engines—per horse power	2.50
Restaurants	25.00 to 100.00
Barber shops—First chair	5.00
Each additional chair	2.00

Fountains—six hours per day for seven (7) months—

1/16 inch jet	5.00
1/8 inch jet	8.00
3/16 " "	12.00
5/16 " "	45.00
Building purposes—Laying bricks per thousand	.10
" stone " cu. yard	.04
Plastering per 100 square yards	.35

Sprinklers and street washers—from April 1st to November 1st.—Sprinkling governed by number of lineal feet front, including privileges of washing windows and side walks and sprinkling lawn and street in front of your own premises—

Dwellings with lawn, &c., as above, for each 50 ft. front for season..... 8.00

No contract made for less than one year.

Business houses, for each 25 feet front for the season..... 8.00

Meter Rates.

For Manufacturing and Mechanical Purposes.

0 to 200 M. gallons monthly at	.....	10 cents per M.
200 to 300 "	.....	9 "
Above 300 "	.....	8

78 For all other purposes not otherwise provided for, the rate will not exceed twenty five (25) cents per thousand gallons—subject to the following discounts

On quarterly bills of $10 to $25 discount 5 per cent.

25	50	10
50	75	15
75	100	20
100	125	25
125	150	30
150	175	35
175	200	40
200	250	45
Exceeding	250	50

Providing that the minimum meter charge shall not be less than $10.00 per annum.

Making connections:

For making connections for private supply the following charges shall be made—

½ inch pipe galvanized iron.....	$8.00
¾ " " "	10.00
1 " " "	14.00

For lead pipe special rates will be given at the time according to the market price.

Black iron gas pipe is not allowed.

SECTION 10TH. The grantees further agree that they will, within a reasonable time, not exceeding three (3) years after the granting and acceptance of this ordinance, provide a high service system, and hereby agree that said system shall be capable of furnishing five (5)

streams of water from the fire hydrants, through two hundred (200) feet of hose and one (1) inch nozzles, thrown simultaneously to an average vertical height of not less than forty (40) feet. Said streams to be taken from the five highest hydrants in the town of North Knoxville; (and they further agree that for all hydrants set under the provisions of this ordinance that do not indicate a pressure of twenty-five (25) pounds, or more per square inch, as indicated
79 by a pressure gauge they will make no charge for rental for said hydrants until said high service shall have been established.

SECTION 11TH. The said grantees further agree that within thirty (30) days after the town council has ordered and located the first installment of hydrants hereunder, and shall have notified said grantees in writing to that effect, they will place an order for pipe, hydrants &c. with reliable foundries and manufactories; and immediately upon the delivery of such pipes, hydrants, &c. will proceed to lay and supply the same with water, and will complete the same within ninety (90) days after said pipes &c. shall have been received; and will thereupon furnish water through the same to said town of North Knoxville, it being provided that said pipes shall be laid and water shall be furnished within six (6) months after said first installment of hydrants shall have been ordered. In the event of their failure to perform the agreements provided in this section, said grantees will forfeit to the town of North Knoxville the sum of one thousand ($1000) dollars as liquidated damages.

SECTION 12TH. In consideration of the benefits to accrue to it and its citizens the town of North Knoxville agrees to, & hereby rents from the said grantees the fire hydrants above mentioned, until June 3rd, 1913, at an annual rental of forty-five ($45.) dollars per hydrant, payable quarterly on the first days of January, April, July and October. Subject to the final provisions of section 7.

80 SECTION 13TH. Said grantees shall extend the mains or lines of pipe whenever requested by North Knoxville, and North Knoxville will rent an additional hydrant for every six hundred (600) feet thereof, at forty-five ($45) dollars per year, payable quarterly, subject to the conditions of section 7; and water may be used from said hydrants for the extinguishment of fires, and for fire protection for necessary practice and drill of fire companies and for flushing and washing all gutters and sewers, now or hereafter built, without payment other than the forty-five ($45.) dollars per hydrant hereinbefore fixed; but in flushing gutters and sewers, not more than one hydrant shall be opened at one time; and said use shall be limited in all cases, to one hour per week for each mile of main laid within the limits of the said town of North Knoxville; and in no case shall flushing be done during a fire in Knoxville, or any of its suburbs.

SECTION 14TH. The grantees shall supply water, not exceeding 5,000 gallons per day, for one ornamental fountain at such point as the town council may designate; and also water for one public

watering trough for man and beast; the cost of their erection to be paid by North Knoxville; and shall also furnish water for two public school buildings, and for the use of the city hall; and for the water to be so furnished, North Knoxville will pay as rental a sum equivalent to the taxes assessed by it against said grantees for the first five years; said rental to be due and payable on the same date taxes may be due; and after the expiration of five (5) years, as herein provided, said grantees shall continue to furnish water as herein provided free of charge, and pay the taxes properly
81 assessed against them.

Said grantees shall furnish water free of cost to each of the churches in said town of North Knoxville, the same to pass through self closing fixtures; the expense of which together with all pipe and connections, and the work of inserting the same, to be borne by said churches respectively.

SECTION 15TH. That North Knoxville will enact all needful and requisite ordinances, within its power to do so, to protect the works and property of said grantees from damage, fraud or imposition.

That any person or persons, or corporation which shall take or use any water from the works of said grantees, for domestic use, or other purposes without contracting for the same, shall be guilty of a misdemeanor and upon conviction shall be fined not less than five ($5.00) dollars nor more than fifty ($50) dollars.

The said grantees shall have the right to shut off the water temporarily from the mains, or any portion thereof, for the purpose of making repairs, or extensions to the works, provided notice is given of the intention to cut off the water, and such repairs and extensions are made without delay, and with due diligence, but if at any time the water is shut off from any cause for more than five days at a time the rental of hydrants shall cease during the time of suspension, and no citizen who is cut off shall be liable to pay for like time.

82 SECTION 16TH. In the event of the construction of a system of sewers by the town of North Knoxville, as it is now, or may be hereafter extended, said grantees will furnish, free of charge, the necessary water to flush sewers by means of a proper, efficient and well regulated system of flushing tanks, or any other well regulated and economical method; to be constructed by the town.

SECTION 17TH. The authorities of the town to whom said duty pertains under the ordinances of the said town of North Knoxville, shall have the right to inspect the fire hydrants at any time; and in case it shall be ascertained by such inspecting, that any of the hydrants are out of repair, or otherwise inefficient for the purposes for which they are erected, the town shall have the right to order the hydrant to be repaired, and shall at once notify the grantees, designating the defect, and if within two (2) days from the receipt of such notice the said grantees do not attend to, such repairs, the town may have the same repaired at its own expense, and may de-

duct from the rental due from it to the grantees the cost of such necessary repairs.

SECTION 18TH. In case of accident to the works of said grantees, the works shall be repaired as speedily as possible, and in case it shall fail to supply water for three (3) months at any time, it shall forfeit six (6) months' hydrant rental of all hydrants not supplied. It being provided that the works to be constructed hereunder are to be in accordance with the most approved practice of modern
83 art, and the pipes, hydrants, valves, &c. are to be of standard make, and subject to the most approved tests before being used in the works, and the grantees shall maintain the water works in such manner as to enable them to comply with the terms of this contract during the entire period thereof.

SECTION 19TH. Be it further ordained that within fifteen (15) days after this ordinance takes effect, the grantees shall file their written acceptance of the same in the office of the recorder of North Knoxville, and upon this being done, this ordinance shall become the contract between the town of North Knoxville and the said grantees, their successors or assigns, the same and as fully as if its provisions were embodied in a formal written contract, made and executed between the parties. And the said grantees shall within said last named fifteen days file with the recorder a good and solvent bond in the sum of five thousand ($5000) dollars, properly conditioned for the faithful performance of the contract herein contained, and also containing a clause, or condition providing that if said grantees shall fail to perform their agreements as contained in section 11 of this ordinance within the time therein specified, said grantee- shall forfeit to the town of North Knoxville the sum of one thousand ($1000) dollars, as liquidated damages for such failure, and they shall be also liable for damage that may accrue from any other breach of the contract herein contained.

In case of failure or neglect on the part of the grantees to
84 furnish an adequate supply of good, clear wholesome water for private and public uses during a period of six (6) months after official notice shall have been given by said town of North Knoxville, except as provided in section 3, then all rights under this ordinance, at the election of said town, shall cease and determine; it being understood and agreed that this shall not apply in any case where the failure or neglect to supply water as aforesaid for six months, is from any cause beyond the control of said grantees.

SECTION 20TH. Said grantees may assign this contract to any water company now organized (or to be hereafter organized) under the laws of the State of Tennessee, and who may become their successors, and said company, whether now organized or to be hereafter organized, may make a mortgage covering any or all portions of its plant, and may issue its bonds thereon. And said grantee- or any water company to whom they may assign this contract, may purchase the franchise and property of any other water company.

The said grantees may extend their mains, at their pleasure, out-

side the corporate limits of North Knoxville, and may make contracts with, and supply water to any person or persons, and any private or municipal corporation from the system of water works herein contracted for. Provided the supply to North Knoxville as herein contracted for shall not be diminished thereby.

SECTION 21ST. It is hereby provided that should the said grantees be prevented from performing any of their agreements as provided for in this contract, including those in section 11, by any legal
85 or judicial interference, by any strike or accident beyond their control, by any public calamity, or when prevented from so doing by any act of the town council of the said town of North Knoxville they shall not be holden, but such additional time shall be granted as shall reasonably cover such interference.

SECTION 22ND. It is further agreed that in case said grantees shall fail to furnish water as contemplated by this contract in section 11, for public and private purposes within twelve (12) months from date of ordering the first installment of hydrants as provided in sec. 11, then all franchises and privileges herein granted, shall become forfeited without further notice; and this contract shall be null and void at the election of North Knoxville, but in declaring the same void the city shall not be deemed to have waived any right of action on the bond executed by said grantees for damages provided by this contract.

SECTION 23RD. And the said grantees hereby agree that they will immediately apply for a charter under the laws of the State of Tennessee authorizing the construction of the system of water works as herein provided, and organizing a company thereunder when the same shall have been granted, to whom this contract shall be assigned.

And the said town of North Knoxville hereby agrees to perform all such acts and things as are required of it in such cases under the laws of the State to perfect the charter.

The grantees may, however, if they should elect not to organize a new corporation, assign this contract as provided in sec. 20, hereof.

86 SECTION 24TH. Be it further ordained That all ordinances or parts of ordinances in conflict with this ordinance be and the same are hereby repealed.

SECTION 25TH. Be it further ordained That this ordinance take effect from and after its passage, the welfare of the corporation demanding it.

I, C. C. Nelson, recorder and treasurer of the city of Knoxville, Tennessee, & custodian of the books & papers of said city, do hereby certify the foregoing to be a full, true & perfect copy of the ordinance it purports to give as passed by the M. & A. of North Knoxville, as the same appears of record on the minutes of said board now on file in my office.

Given under my hand and the seal of the city of Knoxville, Tennessee, August 1, A. D. 1900.

C. C. NELSON,
Recorder & Treasurer.

Endorsed: No. 5. Knoxville Water Co. *vs.* City of Knoxville, *et al.* Exhibit No. 5. Filed August 5, 1904, J. T. Carter, deputy clerk.

87 EXHIBIT No. 6.

STATE OF TENNESSEE:

Charter of Incorporation.

Be it known, that D. S. McIntire, H. E. Holmes, Daniel Kelley, William M. Baxter, and H. P. Coile (all of whom are more than twenty one years of age) are hereby constituted a body politic and corporate by the name and style of "The Lonsdale-Beaumont Water Company" for the purpose of establishing and constructing water works adjacent to and in the town of West Knoxville, in Knox county, Tennessee; and it shall be the duty of said company to build water works and provide machinery in or adjacent said town and of sufficient capacity to supply said town and the inhabitants thereof with a plentiful supply of water and for this purpose said company is hereby authorized and empowered and invested with the privilege to lay down pipes and to extend acqueducts and conductors through any or all the streets, lanes or alleys of said town and to supply the inhabitants of said town with water by public works and for the purpose of laying down such pipes, acqueducts and conductors, said company may take up the pavements or sidewalks upon such street- after permission has first been obtained from the corporate authorities of said town, provided, that said pavements and sidewalks shall be taken up in such manner as to give the least inconvenience to the inhabitants of said town, and that the same shall be replaced with all convenient speed by and at the expense of said company in as substantial manner as found before taking up.

88 The works and operation of said company shall be so constructed and managed as not to effect the health or comfort of said town prejudicially; and nothing in the charter shall be so construed as to absolve said company from legal proceedings to restrain or abate any nuisance arising from its operations.

If any person shall injure or destroy any portion of the fixtures or other works or property belonging to said company or shall wilfully open any communication into the street or other water pipes or let on water after it has been stopped by the company, such person or persons shall be liable for all damages sustained by such proceedings, and also a penalty not exceeding five hundred ($500.00)

dollars upon conviction before a court having jurisdiction of the offense.

If any person or persons shall take or use any of the water of said company for domestic or other purposes without having previously contracted for the same with the officers of said company, such person or persons shall forfeit and pay to said company the sum of fifty ($50.00) dollars to be recovered before any justice of the peace in the same manner as other debts are collected by law; provided, that nothing herein contained shall be construed to compel the inhabitants of said town to use the water so introduced by said company or prevent them from using water obtained in any other way.

If any person or persons shall wilfully corrupt or commit anything to run into or fall into any stream or reservoir from which the said company shall take water to be introduced into said cities or village which shall corrupt the same or render it unpalatable, unwholesome or unfit for domestic or manufacturing purposes or use, or for the supplying of stationary or locomotive engines, or shall bathe in any dam or reservoir, lead or enter any animal into the same on being convicted thereof before any justice of the peace of the civil district in which the said water is situated, shall pay a fine of not less than ten ($10.00) nor more than fifty ($50.00) dollars, one half to the use of the informer, the other half to the use of said company and shall moreover remain liable to said company for all damages.

Said company is hereby empowered and authorized to condemn and take such lands as may be necessary for the establishment of their reservoir and works, and the rights of way through all lands between its reservoirs and the said town to lay its pipes, acqueducts or conductors, and keep the same in repair, is hereby granted to said company: Provided, that such pipes and conductors shall be laid in such manner as to do as little injury to the property of private persons as possible; and provided further that said company shall make compensation to the owners of the real estate condemned or taken, or through which the pipes, conductors or acqueducts may be laid. If the owner and said company cannot agree upon the amount of compensation which shall be paid the same shall be assessed in the manner provided by the Code of Tennessee (1858), section 1325 to 1348 inclusive.

Said company is hereby vested with all the powers and privileges, and shall be governed by all the restrictions incorporated in section 5 of the acts approved March 23rd. 1895, to-wit: the general powers of said corporation are:

1. To sue and be sued by the corporate name.

2. To have and use a common seal which it may alter at pleasure, if no common seal, then the signing of the name of the corporation, by any duly authorized officer, shall be legal and binding.

3. To purchase and hold by gift, in addition to the personal property owned by said corporation, any real estate necessary for the transaction of the corporate business and also to purchase or

accept any real estate in payment or part payment of any debt due to the corporation, and sell realty for corporation purposes.

4. To establish by-laws and make all rules and regulations not inconsistent with the laws and the constitution, deemed expedient for the management of corporate affairs.

5. To appoint such subordinate officers and agents, in addition to the president, secretary or treasurer as the business of the corporation may require.

6. To designate the name of the office and fix the compensation of the officers.

7. To borrow money, and issue notes or bonds upon the faith of the corporate property and also to execute a mortgage or mortgages as further security for repayment of money thus borrowed.

The following provisions and instructions are coupled with said grant of powers:

1. A failure to elect officers at the proper time does not dissolve the corporation, but those in office hold until the election, appointment and qualification of their successors.

2. The term of all officers may be fixed by the by-laws of the corporation, the same not, however to exceed two years.

3. The corporation may by the by-laws make regulations concerning the subscription of or transfer of stock; fix upon the amount of capital to be invested in the enterprise; the division of the same into shares; the time required for the payment thereof by the subscribers for stock; the amount to be called at any one time,
91 and in case of failure of any stockholder to pay the amount thus subscribed by him at the time in the amount thus called a right of action shall exist in the corporation to sue said defaulting stockholder for the same.

4. The board of directors which may consist of five or more members at option of the corporation to be elected either in person or by proxy by a majority of the votes cast, each share representing one vote; shall keep a full and true record of all their proceedings and an annual statement of receipts and disbursements shall be copied on the minutes subject at all times to the inspection of any stockholders.

5. The books of the corporation shall show the original and subsequent stockholders, their respective interests, the amount which has been paid on the shares subscribed, the transfer of stock by and to whom made; also other transactions — which it is presumed a stockholder or creditor may have an interest.

6. The amount of any unpaid stock due from a subscriber to the corporation, shall be a fund for the payment of any debts due from the corporation, nor shall the transfer of stock by any subscriber relieve him from payment unless his transferee has paid up all or any of the balance due on original subscription.

7. By no implication or construction shall the corporation be deemed to possess any powers except those hereby expressly given or necessarily implied from the natire of the business, for which the

charter is granted, and by no inference whatever shall said corporation possess the power to discount notes or bills, deal in gold or silver coin, issue any evidence of debt or currency buy or sell
92 any agricultural products, deal *deal* in merchandise or engage in any business outside the purpose of the charter.

8. The right is reserved to repeal, annul or modify this charter. If it is repealed or if the amendments proposed being not merely auxiliary but fundamental are rejected by a vote representing more than half of the stock; the corporation shall continue to exist for the purpose of winding up its affairs; but not to enter upon any new business.

If the amendments or modifications, being fundamental are accepted by the corporation as aforesaid, in a general meeting called for that purpose, any minor, married woman or person under disability or any stockholder not agreeing to the acceptance of the modifications shall cease to be a stockholder and the corporation shall be liable to pay said withdrawing stockholders the par value of their stock if it is worth so much; if not, then so much as may be its real value in the market on the day of the withdrawal of said stockholders as aforesaid, provided the claims of all creditors are to be paid in preference to said withdrawing stockholders.

9. A majority of the board of directors shall constitute a quorum; and shall fill all vacancies until the next election. The first board of directors shall consist of the five or more corporators who shall apply for and obtain the charter.

10. The said corporation may have the right to borrow money monthly and issue notes and bonds upon the faith of the corporate property, and also to execute a mortgage, or mortgages for the further security for the repayment of money thus borrowed.

We, the undersigned apply to the State of Tennessee by virtue of the laws of the land, for the foregoing charter of incorpo-
93 ration under the acts of March 23rd. 1875, and its various amendments.

Witness our hands this 1st. day of July, 1891.

1. D. S. McINTYRE.
2. H. E. HOLMES.
3. DANIEL KELLEY.
4. WILLIAM M. BAXTER.
5. H. P. COILE.

Witness:
E. C. GOTHARD.

STATE OF TENNESSEE, }
Knox County. }

Personally appeared before me, W. T. Jones, deputy clerk of the county court of Knox county aforesaid, E. C. Gothard the subscribing witness to the annexed charter, who, being first sworn, deposes and says that he is acquainted with D. S. McIntyre, H. E. Holmes,

Daniel Kelley, William M. Baxter and H. P. Coile, the corporators and that they acknowledge the same in his presence to be their act and deed on the day it bears date.

Witness my hand at office in Knoxville the 20th. day of July 1891.

[Seal of the Co. Court, Knox Co., Tennessee.]

W. T. JONES,
Deputy Clerk.

Be it known, that by virtue of a resolution of the corporate authorities of West Knoxville, leave has been had and obtained authorizing the foregoing proposed water company to operate its proposed water works within the corporate limits of West Knoxville, and that as directed and empowered by said resolution, I,
94 John W. Yoe, mayor of the town of West Knoxville do so hereby certify, and for said town assent to the foregoing application for the charter herein applied for by D. S. McIntyre and others. This 1st. day of July 1891.

JOHN W. YOE,
Mayor of West Knoxville.

Received for record the 21st. day of July 1891, at 10 o'clock a. m., recorded July 22nd. 1891.

M. A. M. ARMSTRONG, Register.

I, Chas. A. Miller, secretary of the State of Tennessee, do certify that the foregoing instruments with certificates of acknowledgment of probate and registration *was* filed in my office for registration on the 28th. day of July 1891, and recorded on the 28th. day of July 1891, in Corporation Record Book, PP in said office, page 151.

(Here the Great Seal of the State of Tennessee.)

In testimony whereof, I have hereunto subscribed my official signature and by order of the governor affixed the great seal of the State of Tennessee, at the department in the city of Nashville, this 28th. day of July, A. D. 1891.

C. A. MILLER,
Secretary of State.

This certificate, together with the great seal of the State of Tennessee, was received the 29th. day of July, 1891, at 9 o'clock a. m. and recorded same day.

M. A. M. ARMSTRONG, Register.

REGISTER'S OFFICE,
Knox Co., Tenn.

I, Rob't Brice, register of said county, do certify that the foregoing is a full, true and perfect copy of the charter from State of

Tennessee to the Lonsdale-Beaumont Water Co., as the same appears of record in this office in Book 110, page 343.

Witness my hand at office in Knoxville, this 20th. day of July, 1904.

ROB'T BRICE, Register,
By JNO. W. SNEED, Dep'y.

Endorsed: Knoxville Water Co. *vs.* City of Knoxville, *et al.* Exhibit No. 6, Filed Aug. 5, 1904, J. T. Carter, deputy clerk.

95 EXHIBIT No. 7.

At a meeting of the town council of West Knoxville, held at the city hall, September 17th. 1892, amongst other proceedings, the following ordinance was passed, and became a law, in words, to-wit: (See Record Book, page 193 to 208, inclusive.)

An ordinance to provide for a supply of water to West Knoxville, county of Knox, State of Tennessee, and to its inhabitants, and contracting with Lonsdale-Beaumont Water Co. for a supply of water for public and private use.

Be it ordained by the town council of West Knoxville.

SECTION I. That in consideration of the public and private benefit to be derived therefrom the right and privilege is hereby granted for the period of twenty (20) years from the time this ordinance takes effect, unto Lonsdale-Beaumont Water Company, (hereafter called grantees) of erecting, maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and using the streets, alleys, ways, public squares and all other public places within the corporate limits of said West Knoxville, as they now exist or may hereafter be extended (and with such other territory as may now or hereafter come under the jurisdiction by addition or otherwise) for the purpose of laying pipes, mains and other conduits, and erecting hydrants and other apparatus for conducting and furnishing an adequate supply of good wholesome water in said West Knoxville, and to its inhabitants, for public and private use, and for making extensions, additions and repairs to said system, from time to time, during the period for which this ordinance shall continue or be in force.

96 SEC. II. The said grantees shall exercise all reasonable care and diligence in the use of said streets, alleys, ways and public places, and shall cause no unnecessary obstructions of or interruption to the public travel over and upon the same, or any unnecessary injury to or interference with any pipes or sewers, which may be now, or hereafter lawfully located beneath the surface thereof, and said grantees shall also take every reasonable precaution to provide against danger to life and limb by reason of the exercise of the rights

and privileges hereby granted, and shall cause all excavations and obstructions to be properly lighted and guarded at night, and after the completion of the purposes for which said streets, alleys, ways, public squares and other public places may be used, they shall be carefully tamped and restored to their former condition, as near as may be, without unnecessary delay, and said grantees hereby agree to hold said West Knoxville harmless from any liability which may result to it, by reason of any violation of this section.

SEC. III. The general plan of this system of water works shall be as follows, viz:

Rates.

The pipe system shall consist of not less than five and one-quarter (5¼) miles of pipe, to be of sizes, varying from four (4) to twelve (12) inches interior diameter, and to be laid on such streets, alleys, avenues, ways and public places, as may be designated by the council, after inspection of the plan of pipe line to be hereafter submitted to said town council by said grantees; said council to have the right to confer with a competent civil engineer—and upon which said city may wish to locate hydrants, said pipes to be so located as to form complete circuits in said system, provided, that not more than
97 two hydrants shall be located on a continuous line of four inch pipe, unless the pipe has more than one connection with the large sized pipe; provided, further, however, that said grantees shall have the right to locate and lay their pipes upon any street, avenue, alleys, ways and public places, as they may desire in order to furnish private consumers with water. Provided, further, that grantees shall observe all precautions and be governed by said liabilities in laying such as others, under direction of the council.

All pipes laid to be of standard or heavy weight, and tested at their places of manufacture to withstand a pressure of (300) three hundred pounds per square inch, and to be coated with Dr. Angus Smith's preservation varnish.

The city shall have the right upon the mains hereinbefore provided for, to order the erection of any intermediate fire-hydrants, the same to be free of charge for water during the time of rental for the hydrants, to be inserted by said grantees at the expense of said city, at the actual cost of such hydrants.

Hydrants.

The hydrants shall be frost proof, double nozzle, of approved pattern, with hose tips fitted to connect with such hose couplings as the town council may adopt.

Valves.

Valves shall be located at such points as will admit of not over three blocks being isolated from balance of system in case of needed repairs or extensions; they shall be of the most approved pattern,

and be capable of withstanding the pressure of three hundred (300) pounds oer square inch on either surface, and be furnished with box cover.

98 Pumping Plant.

The pumping plant including reservoir or stand-pipe from which the mains are to be supplied, shall be of modern approved type and plan, and be capable of throwing five (5) streams through fifty (50) feet of hose and inch ring nozzles simultaneously from five (5) separate hydrants, and under such pressure as will throw streams of water fifty feet (50) high on Fort Sanders, (so called) said five hydrants to be so chosen as to give a just average, two by West Knoxville, two by said grantees, and the fifth by a disinterested party chosen by town council and grantees jointly.

Source of Supply.

The source of supply shall be from Tillery springs, from wells and springs adjacent thereto at or near Sharp's gap, or from spring or wells at or adjacent to property formerly owned by Middlebrook Park Association, or from one or more of said places and in all cases such supply shall be ample for the needs of the corporation and its citizens and inhabitants, and *and* be free from sewerage or other contamination and shall be clear, good and wholesome water, suitable for domestic and manufacturing purposes.

All springs and wells used for said supply, shall be protected from surface-water contamination by suitable stone or brick masonary walls; and from matter falling or being thrown into them by seive or other suitable screens being placed and fixed over or above them.

Sec. IV. In consideration of the public benefit and the protection to property resulting from the construction of said system of water works, the said West Knoxville hereby rent of said grantees
99 fifty (50) double nozzle fire hydrants, to be placed at such points on the mains as may be selected by said town council, for the aforesaid period of twenty (20) years, at an annual rental of $40,00 per hydrant, said fifty (50) and all additions thereto, shall bear an annual rental of $40. forty dollars per hydrant, during the remainder of said period of twenty (20) years. All of which annual rent of said hydrant shall be paid semi-annually on the first day of January and July of each and every year. All hydrants placed upon extension of mains in excess of five and one-quarter (5¼) miles hereinbefore mentioned, shall be placed at the rate of nine per mile of pipe or such extensions.

Water shall be used from such hydrants only for the extinguishment of fires and necessary fire practice, and for the flushing of public sewers and gutters, provided that for said flushing of sewers and gutters not more than one hydrant shall be opened at any one time, and only for a period not to exceed six hours (6) per week,

during the first five years; eight hours per week during the second five years, and ten hours per week for the remainder of said term of twenty years.

Said city shall have the right to flush sewers by hose attached to hydrants on mains, or to tap said mains and insert service mains to connect with the flush tanks of its sewerage system, provided that in so doing, no greater amount of water shall be used than hereinbefore provided for flushing purposes.

SECTION V. Water shall be furnished to the corporation schools and public buildings used for town purposes and two drinking fountains for man and beast and one ornamental fountain to be erected at such point on the lines of mains as the town council may direct if council shall erect ornamental fountain at any point not on mains, as located, then sufficient piping shall be laid from
100 point where fountain is located, sufficient to supply same with water, the same in all pipes, fixtures and connections therefor to be furnished and provided by the town, and no water shall be taken from said fountain for private use; and the remuneration to be paid by the town for said service of water shall be equal during the first five years of the operation of the works to such an amount as may from time to time be levied by town council against said water-works plant for municipal taxation, said amount to be due and payable annually.

And for the remainder of the term that the franchise and contract is to run, said grantees are to be liable for and pay taxes and shall furnish water as provided in this section free of cost for purposes named in this section. In case additional drinking or ornamental fountains are ordered by said city, water shall be furnished for the same at the lowest meter rates. Said grantees shall furnish water free of cost to each of the churches of said city, the same passing through self-closing fixtures, the expense of which together with all pipes and connections and the work of inserting the same to be borne by each of said churches respectively.

SEC. VI. Upon the completion of the construction of the said system of water-works, the grantees shall notify the town council of the fact and thereupon an official test shall be made to show the capacity of the works, and if upon such test it shall be shown that said water-works comply with the requirements as contained in section 3 of this ordinance, then and in that case the said council shall by ordinance or resolution formally accept such system, and thereupon the rental for the hydrants hereinbefore mentioned shall begin.

SEC. VII. Be it further ordained, That within ten days
101 after this ordinance takes effect, said grantees shall file their written acceptance of the ordinance in the office of the recorder, and thereupon the same shall be and become the contract between the said town of West Knoxville and said grantees, as fully as if the provisions of this ordinance were embodied in a formal written contract, made and executed between said grantees and West Knoxville, and said grantees shall also within ten days file with the

recorder a good and solvent bond in the sum of one ($1,000) thousand dollars with good local security, conditioned that if said grantees fail to commence work within the time fixed and prosecute same vigorously (with the exceptions hereinafter named) or shall fail to build the works as agreed that grantees shall and will pay West Knoxville one thousand (1,000) dollars as liquidated damages for failure in either of the contingencies herein named, and agreing and providing that the measure of damages for failure to begin work and prosecute the same vigorously or to build the works as agreed, shall be one ($1,000) — dollars, and that amount shall be paid as liquidated damages, said bond to be approved by the mayor before it is accepted by the recorder.

If works are built and accepted after test, then said bond shall be cancelled, and surrendered. If said bond is not approved by the mayor, the council, may if it so elect, declare the contract at an end and forfeited.

The construction of said system of water-works shall be commenced within thirty days (30) after this ordinance takes effect and be completed by February 1st, 1893, provided, however, that the time during which work is delayed by the act of God, the public enemy, or strikes, shall form no part of said time, but it is expressly provided, that said work shall be completed within eight
102 months from the time this ordinance takes effect in any contingency and without excuse, let, hinderance, or cause of any kind.

SEC. VIII. The said town council shall from time to time enact and enforce ordinances inflicting suitable penalties for the protection of said water works, and all property and things therewith connected, as well as the business thereof from damages, fraud or imposition.

SEC. IX. The said grantees shall make extension of their lines of mains whenever called upon to do so, in any proper season of the year, by said West Knoxville, provided, however, that said extension shall not be less than five hundred and eighty-seven (587) feet or major part thereof.

SEC. 10. After the works are put in operation, West Knoxville may from time to time, have tests made upon the same terms of test required for acceptance of works, and if at any time, the said grantees should fail to produce and maintain the pressure in the mains as hereinbefore provided, the same shall be brought up without delay, unavoidable hinderances excepted, and if unreasonable delay, then the rental for the use of the hydrants shall cease until, the standard pressure is obtained, provided, however, that if such failure shall continue for four (4) consecutive calander months, or if grantees or assigns fail to furnish an ample supply of water as agreed, then all the rights under this ordinance shall at the election of West Knoxville cease and determine, but nothing herein contained shall be so construed as to prevent grantees from temporarily cutting off the water from said system or any portion thereof, for the purpose of making the repairs or extensions to the same, and no liability shall

attach to said grantees for the suspension of the supply of water provided the repairs or extensions are made and the water turned on again without unnecessary delay.

103 It is further provided that if the grantees or their successors fail to supply water for the town or citizens, then no rental shall be paid by either town or citizens during such failure.

SEC. XI. The said grantees shall not charge consumers during the continuance of the franchise granted by this ordinance exceeding the following maximum annual rates, these rates, however, to be subject to ten per cent. discount on all bills made except those where water is metered or used for fire protection, mechanical or manufacturing purposes, if settled within ten days of their date.

The following are the said annual rates, viz:

Banks with self-closing faucit	$6.00
Banks with hose connection extra	8.00
Bakerys daily average each bbl. of flour used, per barrel	4.00
Barber shop, first chair and basin	5.00
Barber shop, each additioual chair	2.00
Baths, private without heating attachments	3.00
Baths, private with heating attachments	4.00
Baths public, first tub	10.00
Baths, each additional tub	6.00
Buiiding purposes, brick per M. laid	.08
Building purposes, stone per cu. yard	.04
Building purposes, plastering per 100 yards	.30
Boarding houses, per room, special	
Halls, theatres and hotels	
Laundry, public, per tub	8.00
Offices, one person with wash basin	5.00
Offices, each additional person	2.00
104 Printing offices, special.	
Residences occupied by one family four rooms or less	6.00
Residences, five rooms or less	7.00
Residences, eight rooms or less	8.00
Residences, if over eight rooms, then fifty cents additional for each room.	
Rest-urants, special.	
Stable, one horse, including carriage washing	2.00
Each additional horse or cow	2.00
Livery, boarding or sale, six horses or less including carriage washing	12.00
Livery, for each additional stall	1.60
Sprinkling lawns, 50 feet frontage per season with like frontage on streets	6.00
Urinals, private, with self closing fixtures	4.00
Urinals, for stores, banks and offices	4.00
Urinals, for rest-urants and saloons, with self-closing fixtures	6.00
Urinals, public, with self-closing fixtures	8.00

Water closets, private	4.00
Water closets, self-closing, stores, banks and offices	5.00
Rest-urants, saloons, etc. self closing	6.00
Public "	8.00

Meter Rates.

100 to 300 gallons, per 1000 gallons	.30
300 to 1000 gallons per 1000 gallons	.25
1000 to 5000 " " " "	.22
5000 to 10000 " " " "	.19
10,000 to 15,000 " " " "	.17
15,000 to 20,000 gallons per 1000 gallons	.15
105 Above 20,000 gallons per 1000 gallons	.13

Fountains.

Five hours per day, for seven months 1/16 inch jet	5.00
1/8 inch jet	8.00
3/16	12.00
5/16	40.00
1/4	45.00

The cost of all pipes and plumbing from the street mains to the point where the water is to be used shall be at the expense of the subscriber taking water, said grantees to have the right to control the cock at the curb line, and to determine the quality and kind of pipe used between the street and main and said curb line. Said grantees may make and enforce all needful rules and regulations in the use and waste of water and charge and collect accordingly in advance therefor, at tariff rates not exceeding those hereinbefore specified, and for all purposes not therein enumerated the rate thereof shall be special rate, not inconsistent with the terms and meaning of this ordinance.

SEC. 12. In the event the said grantees of this franchise should hereafter issue bonds secured by a mortgage or deed of trust upon said water-works, franchises, therewith connected, rentals and rights and property, then so much of the hydrant rental payable under the terms of this ordinance as will discharge the interest upon such bonds as it shall mature from time to time, be paid by the said city to the trustee or trustees of such bonds instead of to the grantees, as herein named, when, and as such hydrant rentals are paid under the terms of this ordinance by said West Knoxville, and all payments so made to such trustee or trustees, shall be made exclusively
106 to pay interest upon such bonds so long as the same shall remain due and unpaid, and any surplus not so payable, and the whole after said bonds shall have been discharged, shall be paid over by said city to said grantees, their successors or assigns, provided, however, that in making payments as aforesaid, to the trustee or trustees as aforesaid, the said town shall be subject to no more

additional trouble, liability or expense that it would be in paying the said rentals direct to said grantees, their successors or assigns; and provided, further, that the said grantees may issue mortgage bonds in sums not to exceed one hundred thousand dollars ($100,000) for the purchase of the necessary property and construction of said water-works of West Knoxville, as hereinbefore described, and also for the Lonsdale-Beaumont and Rosedale Land Companies, and adjacent territory. Said grantees may from time to time, issue bonds as provided for improvements, additions and extensions to said plant in sums not exceeding the actual cost thereof.

And provided further that said town shall incur no liability whatever as to application of said rentals to the payment of such interest, but when such payments are made to said trustee or trustees the same shall be a complete exoneration of said town from such rentals.

SEC. XIII. After the expiration of seven (7) years, after the completion and acceptance of said water-works, or at the end of any period of four years (4) thereafter, during the term of this franchise, or any renewed periods thereof, West Knoxville, or its successors, shall have the right to purchase the said water-works, including the entire plant, out of as well as in West Knoxville, with the privileges, finances and property at a fair valuation ascertained as follows: In case said city, its successors and said grantees or assigns, cannot agree as to price to be paid by said city, the said grantees or
107 assigns for said water works, then said party shall select one competent non-resident hydraulic engineer, who shall be sworn to determine the true value of the works and the two thus appointed shall appoint a third, who shall also be sworn. When said three appraisers shall have been chosen, and before they determine the value aforesaid, the city and said grantees, or assigns, shall each, at their option, have the right to call non-resident experts, not exceeding three in behalf of each party to give testimony under oath before said appraisers as to such value. The said appraisers in determining the value of said works, shall take into account the productive value of all rights, privileges and property and in the event that there is no existing fire-hydrant contract at the date of such appraisement, then the last existing contract shall be included in the estimate. Said appraisement shall be binding upon both parties, as to the value thereof, and the said city of West Knoxville and its successors shall have the right to purchase and become the absolute owner of said works, after such appraised value, the cost and expense of such appraisement to be borne equally by said parties.

And should the city or successor elect not to purchase and own the said works in manner and at the time of such appraisement at either of the periods named, then all the rights and privileges of this ordinance granted to said grantees, or assigns shall continue in full force and effect for the remaining term of this franchise, and the said city shall pay the entire cost of said appraisement, but in no

case shall the amount of such appraisement be less than the actual cost of such works, and all additions thereto up to the time of said appraisement if purchased at the end of the seven years first named, but if purchased at any other period named, then appraise-
108 ment shall be for value and the purchase shall be at and for the appraised or agreed value regardless of cost.

SEC. XIV. Be it further ordained, That this ordinance shall not be taken, construed or held to in any way affect, alter, change or release D. L. McIntyre, George W. Sturtevant, Jr., and their associates and assigns, on their contract, or they or their sureties on the bond given pursuant to an ordinance passed June 29th, 1891, and approved June 30th, 1891, for defaults made, or breeches of contract heretofore made.

SEC. XV. Be it further ordained, That this ordinance take effect from and after its passage, the welfare of the corporation requiring it.

Passed final reading, September 17th, 1892.

Approved, September 17th, 1892.

J. W. YOE, Mayor.

STATE OF TENNESSEE, }
City of Knoxville. }

KNOXVILLE, TENNESSEE.

I, C. C. Nelson, recorder and treasurer and custodian of the books and papers of the city of Knoxville, Tennessee, do hereby certify the foregoing to be a full, true and perfect copy of the ordinance it purports to give as the same appears of record in my office.

Given under my hand and seal of the city of Knoxville, Tennessee July 21st, A. D. 1904.

[SEAL.] C. C. NELSON,
Recorder & Treasurer.

Endorsed: Knoxville Water Co. *vs.* City of Knoxville, *et al.* Exhibit No. 7. Filed Aug. 5, 1904, J. T. Carter, deputy clerk.

109 EXHIBIT No. 8.

At the regular meeting of the mayor & aldermen of the city of Knoxville, Tennessee, held Friday, October 20th, 1899.

Amongst other proceedings of said board the following is a copy of an ordinance passed on third and last reading as the same appears of record on the minutes thereof, pages 192-'3-'4-'5 with acceptance, &c., date above given, and the same is in words, to-wit:

"An ordinance authorizing and giving the consent and approval of the city of Knoxville to the consolidation of the Knoxville Water Company and the Lonsdale-Beaumont Water Company and making changes in certain provisions of the contract between the Lonsdale-Beaumont Water Company and the town council of West Knoxville, known as the contract of September 17th, 1892, and also making changes in certain provisions of the contract between the board of mayor & aldermen of the city of Knoxville and the Knoxville Water Company, dated July 1, 1882.

Be it ordained by the board of mayor & aldermen of the city of Knoxville:

SECTION 1. That the consent and approval of the city of Knoxville is hereby given to the consolidation of the Knoxville Water Company and the Lonsdale-Beaumont Water Company into one corporation under the name of the Knoxville Water Company.

Be it further ordained:

SECTION 2. That such consolidation may be effected by consolidation, purchase, lease or otherwise, under the laws of the State of Tennessee, as may be deemed best by said consolidating companies.

Be it further ordained:

SECTION 3. That said Knoxville Water Company, so succeeding to the rights, franchises and property of the Lonsdale-Beaumont Water Company, and the present Knoxville Water Company may obtain its supply of water to be furnished to its customers, both public and private, from the existing plant and system of the present Knoxville Water Company, or some other plant, system or source equally as good as that now used by the said Knoxville Water Company, and the service thus to be rendered, and the supply so to be furnished shall be deemed and regarded as a satisfactory performance of said consolidated Knoxville Water Company of all obligations both public and private under existing contracts of either or both of said consolidating companies.

Provided always said Knoxville Water Company shall furnish to the people living in what is now the tenth ward of the city of Knoxville (being the territory formerly known as the city of West Knoxville), as well as those that may hereafter live in said territory, clear, good and wholesome water free from all sewerage and other contamination equal in quality to that now being supplied by the Knoxville Water Company to the city of Knoxville, at a maximum rate not exceeding that fixed in the ordinance and contract of September 17th, 1892, being the contract between the Lonsdale-Beaumont Water Company and the town council of West Knoxville, and shall maintain and keep up the pressure provided for in said ordinance and contract. And shall in all other respects maintain and carry out the provisions of said contract, unimpaired except as modified in this ordinance.

And provided, further, that said consolidated Knoxville Water Company, succeeding, as aforesaid, to all the rights, privileges and

franchises of both companies, shall also furnish to the people living in the remaining wards of the city of Knoxville, other than the said tenth ward, or who may hereafter live in said remaining wards or such wards as may be hereafter added to the city of Knox-
111 ville, filtered and wholesome water, or water equal in quality to the filtered water now being furnished by the said Knoxville Water Company, at a maximum rate not exceeding that fixed by the contract between the Knoxville Water Company and the city of Knoxville, dated July 1st, 1882, and the schedule of rates and charges now in force and operation by the Knoxville Water Company.

Be it further ordained:

SECTION 4. That the property and franchises which may be obtained by said consolidated company as *to* the result of said consolidation whether the same be effected by consolidation purchase, lease or otherwise, shall be subject to the right of the city to purchase the same in as full and complete a manner as the property now owned by the Knoxville Water Company is subject thereto, under the terms and provisions of the contract existing between the city of Knoxville, and the Knoxville Water Company, dated July 1st, 1882, as set forth in said contract of July 1st, 1882, is hereby extended and made to cover all the property, franchises, rights and privileges now owned by the Knoxville Water Company, or which may hereafter be acquired by it, or said consolidated company.

Be it further ordained:

SECTION 5. That in order that the consolidation hereinbefore provided for may be effected and to enable the Knoxville Water Company and the Lonsdale-Beaumont Water Company to fund their existing debts and obligations and to provide funds to improve the consolidated plant and make extensions thereto, and in consolidation of the benefit to be derived therefrom by the city of Knoxville, and its inhabitants the Knoxville Water Company shall guarantee or fund the existing debts of said companies and said Knoxville Water Company is hereby released from that provision of its
112 contract with the city of Knoxville, dated July 1, 1882, as aforesaid, limiting its indebtedness to $150,000, and such provision or limit in said contract is hereby abrogated and annulled.

Provided, however, that not more than eight hundred thousand dollars ($800,000) of bonds shall be issued prior to the first day of January 1901, and provided further that no bonds in excess of eight hundred thousand dollars ($800,000) shall be issued except to provide funds for additions to or improvements of the plant and property of said Knoxville Water Company and for any bonds to be so issued, said Knoxville Water Comrany shall file with the recorder of the city of Knoxville a sworn certificate showing the actual cost of such addition or improvements, for which bonds may be issued.

Be it further ordained:

SECTION 6. That within thirty days after this ordinance takes effect, said Lonsdale-Beaumont Water Company and said Knoxville

Water Company shall file their several written acceptances of this ordinance in so far as it alters or changes said contract of September 17th, 1892, and of July 1st, 1882, signed by the president and secretary of said companies in the office of the recorder of the city of Knoxville, and thereupon this ordinance shall be and become a part of each of said contracts as fully as if the provisions of this ordinance were embraced in formal written contract made and executed between the city of Knoxville and the said Lonsdale-Beaumont Water Company and the said Knoxville Water Company.

Be it further ordained:

SECTION 7. That said Lonsdale-Beaumont Water Company and said Knoxville Water Company shall pay for the publication of this ordinance.

113 Be it further ordained:

SECTION 8. That this ordinance shall take effect from and after its passage, the welfare of the city requiring it."

Endorsed: Approved, October 20th, 1899. (Signed) Wm. Rule, mayor.

Thereafter the following papers of acceptance were filed with the recorder, and ordered entered on the minutes of the board and the same are in words, to-wit:

To the board of mayor & aldermen of the city of Knoxville:

The Lonsdale-Beaumont Water Company does hereby accept the ordinance passed on the 20th. day of October, 1899, by the board of mayor & aldermen and approved by the mayor on the 20th. day of October 1899, entitled as follows: An ordinance authorizing and giving consent and approval of the city of Knoxville, to the consolidation of the Knoxville Water Company and the Lonsdale-Beaumont Water Company, and making changes in certain provisions of the contract between the Lonsdale-Beaumont Water Company and the town council of West Knoxville known as the contract of September 17th, 1892, and also making changes in certain provisions of the contract between the board of mayor & aldermen of Knoxville and the Knoxville Water Company, dated July 1st, 1882. This acceptance is intended to be in pursuance of the provisions of section 6 of said ordinance.

In testimony whereof, we Elbert Wheeler, as president and Frank C. Kimball, as secretary of the Lonsdale-Beaumont Water Company, do hereby sign and execute this acceptance on this the 20th. day of October 1899.

(Signed) ELBERT WHEELER,
President of the Lonsdale-Beaumont Water Company.
FRANK C. KIMBALL,
Secretary of the Lonsdale-Beaumont Water Company.

114 The following appears of record on page 196 of the minutes of the board of mayor & aldermen of the city of Knoxville, at said meeting, Friday, October 20th, 1899, in words, to-wit:

"To the board of mayor & aldermen of the city of Knoxville:

The Knoxville Water Company does hereby accept the ordinance passed on the 20th day of October 1899, by the board of mayor & aldermen, and approved by the mayor on the 20th day of October 1899, entitled as follows:

An ordinance authorizing and giving the consent and approval of the city of Knoxville to the consolidation of the Knoxville Water Company and the Lonsdale-Beaumont Water Company, and making changes in certain provisions of the contract between the Lonsdale-Beaumont Water Company and the town council of West Knoxville, known as the contract of September 17, 1892, and also making changes in certain provisions of the contract between the board of mayor & aldermen of Knoxville, and the Knoxville Water Company, dated July 1st, 1882. This acceptance is intended to be in pursuance of the provisions of section 6 of said ordinance.

In testimony whereof, we William Wheeler, as president and John F. Mulhal, as secretary of the Knoxville Water Company, do hereby sign and execute this acceptance, on this the 20th day of October 1899.

(Signed) WILLIAM WHEELER,
President of the Knoxville Water Company.
JOHN F. MULHAL,
Secretary of the Knoxville Water Company.

STATE OF TENNESSEE, }
City of Knoxville. }

I, C. C. Nelson, recorder and treasurer of the city of Knoxville, Tennessee, do hereby certify the foregoing to be full, true and
115 perfect copies of the ordinance it purports to give, and the acceptance of said ordinance which it also gives as the same is now of record in my office in the minutes of the board of mayor & aldermen of said city, bearing date, Friday, October 20th, 1899. This ordinance was published in Tribune and Journal, Oct. 26th, 1899, by order of board as to all ordinances being published.

Given under my hand and seal of said city, at office in Knoxville, Tennessee, July 21st, A. D. 1904.

[SEAL.] C. C. NELSON,
Recorder & Treasurer of the
City of Knoxville, Tennessee.

Endorsed: Knoxville Water Co. *vs.* City of Knoxville, *et al.* Exhibit No. 8. Filed Aug. 5, 1904, J. T. Carter, deputy clerk.

EXHIBIT No. 9.

Chapter 12.

House Bill No. 28.

An act to authorize the city of Knoxville to issue bonds to purchase and acquire the plant and property of the Knoxville Water Company, build extensions thereto, and maintain and operate the same.

Whereas, under and by virtue of a certain contract dated July 1, 1882, executed by the authorities of the city of Knoxville (a municipal corporation) and the Knoxville Water Company (a cor-
116 poration organized under chapter 103 of the Acts of 1877) and an ordinance of said city passed October 20, 1899, and accepted by said Knoxville Water Company on the same day, said city of Knoxville has an option and the right to purchase all the property now owned or hereafter acquired up to the date of the purchase of said Knoxville Water Company, at a valuation to be fixed at an appraisement, if not agreed to, as provided in said contract of July 1, 1882, and carried forward and extended in the ordinance of October 20, 1899; and

Whereas, the city of Knoxville desires to take up said option and purchase the plant and property of said Knoxville Water Company to the end that the same be owned, operated and maintained by said city for the benefit of the people thereof.

Now, therefore, in order that said city may be enabled to purchase and acquire the plant and property of said Knoxville Water Company and build additions thereto that may be deemed necessary.

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That the city of Knoxville, the corporate name of which is the mayor and aldermen of the city of Knoxville, be and hereby is authorized to make the purchase of the plant and property of said Knoxville Water Company, and to make necessary extensions thereto, and for that purpose the said city of Knoxville is hereby authorized to issue bonds in such amount, number and denomination, and to run such length of time as may be determined by the mayor and aldermen of said city, at a rate of interest not exceeding 4 per cent., payable semi-annually, for such time as said mayor and aldermen of said city may determine to enable it to acquire the plant and property of the Knoxville Water Company in accordance with
117 the terms and provisions of the aforesaid contract of July 1, 1882, and the aforesaid ordinance-contract of October 20, 1899.

SEC. 2. That authority is hereby conferred upon said corporate authorities of the city of Knoxville to issue such an amount of bonds as may be necessary to purchase and acquire the said plant and

property of the said Knoxville Water Company upon the agreed valuation between the contracting parties, or in default of same, upon a valuation to be ascertained and fixed by appraisers in accordance with the provisions of the aforesaid contract of July 1, 1882, and the ordinance of October 20, 1899, between said city and said water company.

SEC. 3. That in addition to the bonds necessary to enable said city to acquire the plant and property of said water company, said city is hereby authorized to issue additional bonds in an amount not exceeding 10 per cent. of the amount of bonds necessary to purchase said plant and property of said water company to be used in making additions to said plant, including acquisition of such real estate or other property necessary in making such additions.

SEC. 4. The bonds shall be payable in gold coin of the United States of standard weight and fineness, provided, however, that the city may either issue its own bonds in exchange for outstanding bonds of the Knoxville Water Company as part of the purchase price of said plant and property, or the said city may assume, as part of the purchase price, the bonded indebtedness now upon the plant and property of the Knoxville Water Company, or any part thereof, in lieu of the issuance and sale of a proportionate amount of its own bonds under the power herein granted.

118 SEC. 5. Before notice shall be given or an appraisal had in pursuance to the contract of July 1, 1882, and the ordinance of October 20, 1899, or issuance of bonds, an election shall first be called throughout the city of Knoxville under the general laws governing municipal elections in Knox county, and if two-thirds of the qualified voters of said city voting in said election shall vote in favor of the purchase of the plant and property of the Knoxville Water Company and the issuance of the bonds for the purposes of this act, or exercise of other powers herein given, then the mayor and aldermen of the city of Knoxville shall forthwith give notice of the acceptance by the city of the option to purchase said plant, whereupon, unless the valuation of said plant is agreed upon by the contracting parties, an appraisal shall be had of all the property of the Knoxville Water Company, as provided for in the contract of July 1, 1882, and in the ordinance of October 20, 1899, after which bonds sufficient shall be issued as may be necessary under this act for the purchase of said property and plant. The said bonds to be under the management and control of the commissioners to be hereinafter appointed, and to be sold, if sale is necessary, at not less than par; provided, however, that the city may exercise the power herein given to assume the bonds of the Knoxville Water Company to be credited at par upon the appraised value of said property.

SEC. 6. That the commissioners of election shall furnish according to the laws now existing and regulating elections in this State, tickets to be used in said election and upon such tickets shall be printed, first "Bonds;" second, immediately below, "No bonds," and

persons voting for the issuance of bonds and for the purchase
119 of the property and plant of the Knoxville Water Company, and for the extension of same and other provisions of this act, shall mark their tickets with a cross opposite the word Bonds, and those voting against the same shall in like manner mark their tickets opposite the words No bonds.

SEC. 7. That the mayor and aldermen of the city of Knoxville shall have the power of eminent domain to take and appropriate in making extensions to said plant the grounds and other real property in the same manner as are now provided for condemnation in laying out streets, etc., in sub-section 30 of section 18 of the charter of the city of Knoxville.

SEC. 8. That for the purpose of controlling, managing and operating said water plant and for the disposal of the bonds or money realized therefrom, as provided in this act in the event of a favorable election for the issuance of bonds, as hereinbefore provided, there is created a waterworks commission for said city, which shall be composed of three members, all to be reputable citizens and tax-payers of the city without any official connection with the city, and without any connection whatever with the water company. Said commissioners shall be elected by the city council at its next regular session after it has been determined that the city has voted in favor of the issuance of bonds for the purchase of said plant, etc., by the majority herein designated.

The said commissioners so elected shall hold for a period of one, two and three years respectively from the date of their election and qualification, and until their successors are elected and qualified.

The mayor and aldermen of the city of Knoxville shall have the power to fill all vacancies in said waterworks commission at any regular session of said board after which vacancy occurs.

120 Said commissioners shall take an oath of office to faithfully perform their duties before the city recorder, who shall file in his office said oaths and preserve the same, and they shall, likewise give bond in such sums as the mayor and aldermen of the city of Knoxville may prescribe, conditioned for the faithful discharge of their duties, which bond shall likewise be filed and preserved in the office of the recorder of said city.

Said commissioners are forbidden to have or take any interest, direct or indirect, in any contract or transaction relative to the purchase, extension or operation of said plant.

The compensation to be paid said commissioners shall be determined by the mayor and aldermen of the city of Knoxville in such sum as said authorities may deem adequate, the same to be fixed before said commissioners are elected. Said commissioners will elect a chairman and secretary, and also such clerks as may be necessary for the work to be done, and also a treasurer of the commission, whose salary shall be fixed by the mayor and aldermen of the city of Knoxville.

The said commission shall require of such clerks and treasurer

an adequate bond for the faithful discharge of their duties, which bond shall be approved by the board of mayor and aldermen, and shall be filed and preserved in the recorder's office of said city.

The powers and duties of said commissioners shall be full and ample to make all contracts, for the extension of said plant or the operating and maintenance of the same, but all contracts involving an expenditure of more than five thousand ($5000) dollars,
121 shall be reported to the city council, and approved by it before the same shall be final. The said commissioners shall also have the power, subject to the foregoing limitations, of making all needed repairs deemed by them necessary to the proper operation and maintenance of said plant. Upon due notice any commissioner guilty of misconduct or misfeasance in office shall be removed by the mayor and aldermen of the city of Knoxville.

SEC. 9. Be it further enacted, That this act shall take effect from and after its passage, the public welfare requiring it.

Passed January 29, 1903.

L. D. TYSON,
Speaker of the House of Representatives.
ED. T. SEAY,
Speaker of the Senate.

Approved February 2, 1903.

JAMES B. FRAZIER, Governor.

Endorsed: Knoxville Water Co. *vs.* City of Knoxville *et al.* Exhibit No. 9. Filed Aug. 5, 1904, J. T. Carter, deputy clerk.

122 EXHIBIT No. 10.

Chapter 153.

Senate Bill No. 257.

An act to authorize the city of Knoxville to own and operate a system of water works, and to issue bonds for that purpose, and to amend house bill No. 28, being an act entitled "An act to authorize the city of Knoxville to issue bonds to purchase and acquire the plant and property of the Knoxville Water Company, build extensions thereto, and maintain and operate the same," passed January 29, 1903, and approved February 2, 1903, so as to read as follows:

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That it shall be lawful for the mayor and aldermen of the city of Knoxville to acquire, own, and operate a system of waterworks for said city and adjacent territory, either by purchase or construction, and for that purpose it is authorized to issue its interest bearing coupon bonds to an amount not exceeding $750,000 in the manner and under the restrictions hereinafter provided.

SEC. 2. Be it further enacted, That said bonds shall be issued under rules, regulations and restrictions to be provided by ordinance, by the mayor and aldermen of said city, which bonds shall be in the denomination of $1,000 each, and shall bear a rate of interest to be fixed by said ordinance, not exceeding four per cent. per annum, and shall run for a period of not longer than forty years, the interest on the same to be payable semiannually on the first of January and July, respectively, said interest and principal to be paid in
123 gold coin of the present standard and fineness, and which said bonds shall be provided with coupons for each semiannual interest payment, and said bonds shall be known as the "waterworks bonds" of the city of Knoxville, and shall not be sold for less than par. No commission whatever shall be allowed for the sale of said bonds.

SEC. 3. Be it further enacted, That the proceeds of said bonds shall be paid into the city treasury and be there kept and preserved as a separate fund to be used exclusively in the purchase or construction of a system of waterworks for said city and adjacent territory, and in making such alterations, extensions, additions and improvements as may be necessary, and in maintaining the same. Said bonds, and all coupons attached to said bonds, shall at maturity be and remain until fully paid, a lien on said waterworks property, appurtenances, rights, franchises and privileges acquired by the corporate authorities of said municipality. Said lien shall include and extend to all improvements, extensions and additions which the corporate authorities of said municipality may make, and shall be in addition to the corporate liability for the payment of said bonds. Said bonds and coupons attached thereto, shall be exempt from municipal taxation.

SEC. 4. Be it further enacted, That there is hereby created for said city of Knoxville, a waterworks commission, to be composed of five citizens and freeholders of said city, who shall be elected by the city council of said city, as herein provided. One member shall be elected for one year, one for two years, one for three years, one for four years and a fifth for five years, who shall hold their office for the time for which they shall be elected and until their successors shall be elected and qualified; which successors shall each be
124 elected at the conclusion of the several terms aforesaid for the term of five years thereafter; provided, that election to fill vacancies in said commission shall only be for the unexpired term in which the vacancy occurs. Said commissioners shall not be related to the mayor or any member of the city council, or any department official of said city within the fourth degree, either by affinity -- consanguinity. The first board of commissioners shall be elected not earlier than sixty days after the passage of this act, which election and all subsequent elections, including elections to fill vacancies, shall be upon thirty days' public notice, and at a regular meeting of said city council.

SEC. 5. Be it further enacted, That before entering upon their

duties said commissioners shall each file with the city recorder a bond with solvent sureties in the penalty of one thousand dollars, payable to the State of Tennessee for the use of the city of Knoxville, conditioned that said commissioner shall honestly and faithfully perform all the duties devolving upon him as such commissioner, which bond shall be approved by the mayor and aldermen of said city, and said commissioners shall before entering upon their duties, take and subscribe to the following oath:

"I, —— ——, do solemnly swear that, as a member of the waterworks commission of the city of Knoxville, I will honestly and faithfully perform all the duties devolving upon me as such commissioner, and that I am not related to any of the parties forbidden by law within the prohibited degree, and that I am not, and will not become during my term of office, interested in any contracts
125 relating to the construction or operation of said waterworks, as prohibited by law, so help me God."

SEC. 6. Be it further enacted, That said commissioners are hereby prohibited from having any interest, direct or indirect, in any contract in anywise relating to the construction, purchase and operation of said waterworks, and are also prohibited from awarding contracts for the construction or operation, or for any material for use in the construction, extension and operation of said water plant to any person or persons related to any of the members of said commission within the fourth degree, either by affinity or consanguinity, or to any member of the city council, or to any department official of said city, or in which any such person, member or department official, or any assistant, clerk or deputy under them, has any direct or indirect interest.

SEC. 7. Be it further enacted, That the entire work of supervision of the purchase or construction and operation and maintenance of said system of waterworks shall be vested in said board of commissioners as above provided within the limitations hereinafter provided.

SEC. 8. Be it further enacted, That said commissioners are authorized and directed to obtain from the Knoxville Water Company a written proposition for the sale of its plant, franchises etc., to the city of Knoxville, giving the price and terms of payment, together with the opinion of competent, disinterested experts as to the cost and present value of said plant; said commission is also authorized and empowered to secure plans, specifications and estimates of the cost of the construction of a new system of waterworks, and to report all matters called for in this section to said city council for its consideration, and to accompany said report with its recommendations in the premises, which recommendations shall be accompanied
126 with all facts, testimony and opinions upon which the same are based. Provided, that said commission shall not close any contract for the purchase or construction of waterworks until it has been duly authorized to do so by said city council, after the proposition shall have been ratified by a vote of the people as herein

provided; and provided, further, said commission shall not incur any expense in any of said matters until authorized to do so by said city council, and until there has been appropriated out of the city treasury and placed to the credit, and at the disposal of said commission, a sufficient amount of money to cover such expense.

SEC. 9. Be it further enacted, That said commission shall organize by electing one of their number as chairman, and by electing a secretary and treasurer, who need not be a member of said board of commissioners, but who, before entering upon his duties, shall execute bond in a penalty to be fixed by the board of mayor and aldermen, and with good and sufficient sureties to be likewise approved by said board. Said waterworks commissioners shall have regular meetings and may have special meetings under rules and regulations adopted by themselves. They shall keep a true and faithful record of all their actions and proceedings, and of the waterworks plant purchased or constructed by them, and of all extensions, alterations and improvements made by them. A copy of said record on any subject, certified by said chairman and secretary, shall be evidence in the courts of this State. They shall be authorized to make contracts, employ clerks, engineers, firemen, superintendents, inspectors, water meter readers, plumbers, laborers and other persons, and purchase materials such as may be necessary in the construction or operation of said waterworks plant. They shall fix the compensation of all employés, except that of the sec-
127 retary and treasurer, whose salary or compensation shall be fixed by the board of mayor and aldermen. Said secretary and treasurer when elected, shall not be related to any member of said waterworks commission, or to any department official of said city within the fourth degree. They are authorized to make and enforce reasonable rules and regulations and to fix water rates, tolls, or the price for the use of water, and they may for said purposes, enter upon premises where water is used or desired for purposes of inspection, repairs or other work in introducing or regulating the use of water. They shall have full power to collect and enforce collections of all moneys due for the use of water or arising out of the operation of said plant. They shall also have power to grant the use of water free of charge to persons who are objects of charity and to charitable institutions. But the rules and regulations and water rates made by said commissioners shall be subject to ratification by ordinance by the board of mayor and aldermen.

SEC. 10. Be it further enacted, That no contract made by said waterworks commissioners in the construction, alteration or extension of said waterworks, involving more than one thousand dollars, shall be binding upon the city, until submitted to the board of mayor and aldermen and approved by them.

SEC. 11. Be it further enacted, That said waterworks commissioners shall submit to the board of mayor and aldermen at their last regular meeting in January of each year, a full detailed report of the work, income and expenditures for the preceding

year, showing sources of income, items of expense, names of all salaried employés, improvements, extensions and alterations made and such other matters as they may deem material and as the board of mayor and aldermen may call for. And their
128 report and books shall be subject to examination and correction by the board of mayor and aldermen. Said report shall also contain an estimate of the costs, expenses, improvements, extensions and alterations necessary for the succeeding year.

SEC. 12. Be it further enacted, That the board of mayor and aldermen of the city of Knoxville shall have and are hereby given and granted power and authority to determine by ordinance whether or not the members of the waterworks commission shall be compensated for services rendered or shall render same without compensation, and if compensation is determined to be allowed them, then the amount of such compensation and manner and time of its payment shall be fixed by ordinance.

SEC. 13. Be it further enacted, That in the event it shall be determined to purchase or construct, equip and maintain a system of waterworks by the city, then for the purpose of securing sites for pumping stations and other necessary purposes, including the laying of mains and water pipes, and sites for reservoirs and filtering galleries, extensions, improvements and alterations, the city shall have and is given the right of condemnation of grounds within and without its corporate limits, as already given in subsection 30 of section 18 of its charter, as well as by proper proceeding in the circuit court for Knox county, as provided by law.

SEC. 14. Be it further enacted, That any member of said board of waterworks commissioners shall be subject to removal by the board of mayor and aldermen for incompetency or official misconduct, upon specific charges in writing and after due notice to the members against whom charges are made, and after trial, or opportunity of trial, before the board of mayor and aldermen. But two-thirds of said board of mayor and aldermen shall vote for said removal before the same can be made.

129 SEC. 15. Be it further enacted, That after said commissioners shall have made their report to the city council as provided in section 8 of this act, said city council shall call an election to be held in the said city of Knoxville by the regularly constituted authorities, after thirty (30) days' advertisement in two city papers, at which all persons legally qualified to vote for mayor and aldermen of said city may vote for the purpose of ascertaining the will of the people upon the following question:

First. Whether or not the city shall be authorized to issue bonds as provided in section 1 of this act, and

Second. To determine whether the city shall purchase the plant of the Knoxville Water Company, or construct a new water system. The election commissioners shall cause to be prepared ballots to be used and voted at said elections on which there will be printed the following:

"Vote for One."

"For Waterworks Bonds."

"Against Waterworks Bonds."

"Vote for One."

"For Construction of Waterworks."

"For Purchase of Waterworks."

At said election those who favor the issuance of bonds shall place a cross (X) mark opposite the words "For waterworks bonds," and those who oppose the issuance of bonds shall place a cross (X) mark opposite the words "Against waterworks bonds," and those who favor the construction of waterworks shall place a cross (X) mark opposite the words "For construction of waterworks," and those favoring the purchase of the Knoxville Water Company's plant shall place a cross (X) mark opposite the words "For purchase of waterworks."

130 Provided, that if said waterworks commissioners are unable to obtain from the Knoxville Water Company a written proposition for the same of its plant, franchise, etc., to the city of Knoxville, giving the price and terms of payment, "For waterworks bonds," "Against waterworks bonds," shall be issued for the construction of waterworks and the tickets shall contain only the words "Vote for one," "For waterworks bonds," "Against waterworks bonds," and those who favor the construction of waterworks by the city shall place a cross (X) mark opposite the words "For waterworks bonds," and those who oppose the construction of waterworks by the city, place a cross (X) mark opposite the words "Against waterworks bonds." Said election shall be held under existing laws and the return shall be duly certified to the board of mayor and aldermen of said city; provided, there shall also be returned to said board of mayor and aldermen all the ballots voted at said election, together with one set of poll books and one set of tally sheets. The remaining poll books and tally sheets shall be filed in the office of said commissioners of election, there to be held subject to the inspection of any citizen of said city. Provided, that the election authorized by this act may be called and held by the election commissioners of the county under the general election laws and held at any time within two years after the passage of this act.

Provided further, that after one election has been held under this act, one or more subsequent elections may be held under this act, but no such election shall be held until the expiration of at least twenty-four months after a previous election.

Sec. 16. Be it further enacted, That it shall be the duty of said city council, when it shall be convinced that two-thirds of all
131 those voting on the question of the issuance of bonds have voted in favor thereof, to declare the result by ordinance, and

in that event and no other, to cause said bonds to be issued as provided herein, and cause the same to be converted into cash under such rules and restrictions as it shall deem necessary to provide by ordinance. Provided, that said bonds shall not be issued until after a contract for the construction or purchase of said water-works shall have been lawfully made and concluded.

SEC. 17. Be it further enacted, That said city council shall also canvass and by ordinance declare the result of said election on the question of purchase or construction of a system of waterworks, and shall cause to be carried into effect the will of the people, as expressed at said election. Provided, that if the said Knoxville Water Company submit a written proposition as shown in section 8 of this act, a majority of those voting on said proposition for purchase or for construction in favor of either proposition, shall be sufficient and shall decide the question.

SEC. 18. Be it further enacted, That the net annual income and revenues derived from the operation of the waterworks system, after payment of operating expenses, extensions and improvements, or as much thereof as shall be necessary for that purpose, shall be set apart and applied first to the payments of the interest coupons of said waterworks bonds, as such interest coupons shall mature.

SEC. 19. Be it further enacted, That all laws and parts of laws in conflict with this act are hereby repealed, and that this act take effect from and after its passage, the public welfare requiring it.

Passed March 31, 1903.

ED. T. SEAY,
Speaker of the Senate.
L. D. TYSON,
Speaker of the House of Representatives.

Approved April 3, 1903.

JAMES B. FRAZIER, Governor.

132 Endorsed: Knoxville Water Co. *vs.* City of Knoxville, *et al.* Exhibit No. 10. Filed Aug. 5, 1904. J. T. Carter, deputy clerk.

Motion for a Preliminary Injunction.

In the United States Circuit Court for the Northern Division of the Eastern District of Tennessee.

KNOXVILLE WATER COMPANY, Complainant,
vs.
MAYOR & ALDERMEN OF THE CITY OF KNOXVILLE ET AL. } No. —.

Motion for Preliminary Injunction.

Now comes the complainant in the above entitled cause, The Knoxville Water Company, by Shields, Cates & Mountcastle, solicitors of

complainant, and moves this honorable court to grant a writ of injunction against defendants Mayor and Aldermen of the City of Knoxville and The Water Works Commission of the City of Knoxville, and each of them, or defendant's attorneys, clerks, servants and employees, pending this suit and until the further orders of this court, upon the prayer of the bill in said cause filed.

SHIELDS, CATES & MOUNTCASTLE,
Solicitors for Compl't.

Endorsed: Knoxville Water Co. *vs.* Mayor & Aldermen of the City of Knoxville, *et al.* Motion for preliminary injunction. Filed Aug. 5, 1904, J. T. Carter, deputy clerk.

133 Restraining Order.

In the United States Circuit Court for the Northern Division of the Eastern District of Tennessee.

KNOXVILLE WATER COMPANY, Complainant,
vs.
MAYOR & ALDERMEN OF THE CITY OF KNOXVILLE ET AL. } No. —.

Whereas, in the above cause, a motion for the issuance of a preliminary writ of injunction has been duly filed, the hearing thereof being fixed for the 19th day of September, 1904, at Knoxville. If defendants ask to have the motion for injunction heard on an earlier day it will be done if practicable, and it having been made to appear that there is danger of irreparable injury being caused to complainant, before the hearing of said application for a writ of injunction, unless the said defendants, Mayor & Aldermen of the City of Knoxville, and The Water Works Commission of the City of Knoxville are, pending such hearing, restrained as herein set forth, therefore complainant's application for such restraining order is granted:

Now therefore, take notice that you, Mayor & Aldermen of the City of Knoxville and W. L. Russell, F. J. Callan, E. G. Oates, J. Allen Smith, J. Y. Johnston, constituting The Water Works Commission of the City of Knoxville, defendants herein, your agents, servants and attorneys, and each of you are hereby specially restrained and enjoined from entering into any contract for the building and construction of a separate, independent and competing water plant, that is a water plant which shall be used in competition to the plant
of complainant Knoxville Water Company, and from issuing
134 any bonds, and especially those bonds claimed to be authorized by and under chapter 153 of the Acts of 1903, and the election held in the city of Knoxville on the 9th day of July 1904, for the purpose of building and constructing a separate, independent and competing water plant, until the hearing of said application for writ of injunction and until the further order of the court in the premises.

This sixth of August 1904.

(Signed) CLARK, Judge.

Endorsed: No. 1382. Restraining order. Knoxville Water Co. *vs.* M. & A. of the City of Knoxville, *et al.* Filed Aug. 8, 1904, J. T. Carter, deputy clerk.

Return.—Received at Knoxville Aug. 10, 1904. Executed by serving W. H. Gass with copy of writ, also copy of bill, and reading the within writ to each of the within named water works commission of the city of Knoxville, Tenn. on Aug. 10th & 11th. 1904, in Knox county, Tenn.

Marshal's cost	$12.00
Expense	30
	$12.30

C. W. McCALL, D. M.

Chancery Subpœna.

UNITED STATES OF AMERICA, Eastern District of Tennessee, } ss:

The United States of America to the Mayor & Aldermen of the City of Knoxville, a municipal corporation, and W. L. Russell, F. J. Callan, E. G. Oates, J. Allen Smith; and J. Y. Johnston, con-
135 stituting the water works commission of the city of Knoxville, Greeting:

We command you, and every one of you, to appear before our judge of our circuit court of the United States of America, for the eastern district of Tennessee, at Knoxville, on the second Monday of September next, that being the rule day to which this writ of subpœna is returnable to answer to the bill of complaint of the Knoxville Water Company, a corporation, this day filed in the clerk's office of said court, in the city of Knoxville, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the eastern district, to execute:

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Knoxville, aforesaid, this 8th. day of August in the year of our Lord one thousand nine hundred and four, and of our Independence the 129th.

HENRY O. EWING, Clerk,
By J. T. CARTER,
Deputy Clerk.

MEMORANDUM.—The above named defendants are hereby notified that unless they enter their appearance in the clerk's office of said

court at Knoxville aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

[SEAL.] HENRY O. EWING, Clerk,
By J. T. CARTER,
Deputy Clerk.

Endorsed: No. 1382. Circuit court, United States. eastern district of Tennessee. Knoxville Water Co. *vs.* Mayor & Aldermen of the City of Knoxville, *et al.* Chancery subpœna. Returnable to rule day 12th. day in September, A. D. 1904, Henry O. Ewing,
136 clerk. Issued Aug. 8th. A. D. 1904, Henry O. Ewing, clerk. Shields, Cates & Mountcastle, complainant's solicitors. Filed Aug. 12th. 1904, J. T. Carter, deputy clerk.

Return.—Received this writ Aug. 10th at Knoxville, Tenn. Executed same as commanded by serving W. H. Gass, mayor, with copy, and reading the within writ of subpœna to the within named water works commission of the city of Knoxville, on Aug. 10th & 11th, 1904, in Knoxville, Tenn. Marshal's cost $12.00, C. W. McCall, D. M.

Be it remembered that at a circuit court of the United States, began and held for the northern division of the eastern district of Tennessee, at the Federal court rooms in the city of Knoxville, within said district and the sixth circuit on the second Monday, it being the 12th day of September, A. D. 1904, the following proceedings were had, to-wit:

There being no judge of said court present, the court was regularly opened by Richard W. Austin, United States marshal for the eastern district of Tennessee, and thereupon the court was adjourned by said marshal until to-morrow morning at 9 o'clock.

TUESDAY, September 20th, 1904.

Court met pursuant to adjournment.

Present and presiding: The Honorable C. D. Clark, judge &c.

KNOXVILLE WATER COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF KNOXVILLE. } No. 1382.

137 In this cause on application of the plaintiff, Knoxville Water Company, leave is hereby granted to amend its bill upon the face thereof by adding immediately at the close of the 15th paragraph, the following:

"Your orator further shows that by section 18 of article 2 of the constitution of Tennessee, it is, among other things, provided that, "No bill shall become a law until it shall have been read and passed on three different days in each house, and shall have received on

its final passage in each house, the assent of a majority of all the members to which that house shall be entitled under this constitution, and *shall have been signed by the respective speakers in open session, the fact of such signing to be noted on the journal,*" etc., and your orator charges that said act of the General Assembly of the State of Tennessee, known as chapter 153 of the Acts of 1903, as aforesaid, was not signed by the speaker of the senate in open session, nor was the fact of such signing noted upon the journals of the senate and is not now so noted, so that your orator charges that said act not having been passed in conformity with the aforesaid mandatory requirements of the constitution of Tennessee, and not having received the signature of the speaker of the senate in open session, which fact was not and is not noted upon the journals of the senate, is therefore void and in contravention of the constitution of Tennessee.

138 Demurrer.

In the Circuit Court of the United States at Knoxville, Tennessee.

KNOXVILLE WATER COMPANY, Complainant,
vs.
MAYOR & ALDERMEN OF CITY OF KNOXVILLE and Others, Defendants. } # —. In Equity.

The joint and several demurrer of the Mayor & Aldermen of the City of Knoxville and W. L. Russell, F. J. Callan, E. G. Oates, J. Allen Smith, and J. Y. Johnson, constituting the water works commission of the city of Knoxville, to the bill filed against them in the above entitled cause.

These demurrants by protestation, not confessing or acknowledging all or any of the matters or things in the bill to be true in manner or form, as therein set forth and alleged, do demur thereto, and for grounds of demurrer show:

First.

Because the bill, on its face, when taken in connection with its exhibits thereto and made part thereof, shows that this court is without jurisdiction in the premises.

Second.

Because the bill fails to aver or show anything therein, standing alone or taken in connection with the exhibits filed therewith and made part thereof, which shows that defendants have in any way impaired the obligation of the complainant's contract rights
139 in contravention of section 10, article 1, of the United States Constitution, or have or will in any way deprive complainant

of its property and franchises without due process of law, or have or will deprive it of the equal protection of the law, in contravention of the 14th amendment of the Constitution of the United States.

Third.

Because the bill fails to allege any fact or facts which show that demurrants have, or intend to do or commit, any act which will impair the obligation of any contract between the demurrant City and the complainant Knoxville Water Company, if there be any contract between them.

J. W. CULTON,
JEROME TEMPLETON,
R. H. SANSOM,
JNO. W. GREEN,
Solicitors for Demurrants.

STATE OF TENNESSEE, }
Knox County. }

W. H. Gass being first duly sworn makes solemn oath and says: That he is the mayor of the defendant municipal corporation, Mayor and Aldermen of the City of Knoxville, and that the foregoing demurrer is not interposed for delay.

W. H. GASS.

Sworn to and subscribed before me this the 20 day of Sept. 1904.
[SEAL.] J. T. CARTER, Dep. Clerk.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

J. W. CULTON,
JEROME TEMPLETON,
R. H. SANSOM,
JNO. W. GREEN,
Att'ys for Def'ts.

140 Endorsed: No. 1382. Knoxville Water Co. *vs.* Mayor & Aldermen of Knoxville *et al.* Demurrer. Filed Sept. 20, 1904. J. T. Carter, deputy clerk.

THURSDAY, September 29th, 1904.

Court met pursuant to adjournment,
Present and presiding, the Honorable C. D. Clark, judge &c.

KNOXVILLE WATER COMPANY
vs.
MAYOR & ALDERMEN OF CITY OF KNOXVILLE ET AL. } No. 1382.

In this cause upon application of complainant, Knoxville Water Company, it is ordered that the original bill be and the same is

hereby amended so as to strike out that portion thereof beginning with the word "with" in the third line of the fourth page and ending with the words "some other way," being the first three words in the sixth line on said fourth page, and substituting in lieu thereof the following, "and its inhabitants with a supply of water for fire protection, public, sanitary and domestic purposes," and it is ordered that said amendment be made upon the face of said bill.

141 In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

KNOXVILLE WATER COMPANY
vs.
MAYOR & ALDERMEN OF THE City of Knoxville *et al.*

No. 1382. Heard on Demurrer and on Application for Injunction.

There can be no doubt in regard to the jurisdiction of this court over the case as involving a Federal question, unless it can be affirmed that the averments of the bill as to the existence of this constitutional or Federal question plainly appear not to be real and substantial, but without color of merit.

Newburyport Water Co. *v.* Newburyport, 193 U. S. 561.

It requires, however, no very extended or close study of the allegations of the bill and the contract on which the claims made in the bill are grounded to perceive that the constitutional question is one of substantial and serious import, in view of the well considered cases, both State and Federal.

When the Federal question appears to be substantial, or to possess color of merit, the jurisdiction of this court is undoubted and does not at all depend on whether or not the Federal question shall be decided against the contention of the plaintiff on the merits.

Swafford *v.* Templeton, 185 U. S. 487.
City Ry. Co. *v.* Citizens' R. R. Co., 166 U. S. 557.
Penn Mutual Life Ins. Co. *v.* Austin, 168 U. S. 695.
Vicksburg Waterworks Co. *v.* Vicksburg, 185 U. S. 65.
New Orleans *v.* New Orleans Waterworks Co., 142 U. S. 79.

142 City Ry. Co. *v.* Citizens' R. R. Co., 166 U. S. 557.

See also cases cited in N. C. & St. L. R. R. Co. *v.* Taylor, 86 F. R. 168.

In the case of Walla Walla *v.* Walla Walla Water Co., 172 U. S., 1, cited and much relied on by both sides, the Supreme Court of the United States, speaking by Mr. Justice Brown, in relation to the point of jurisdiction, said:—

"The argument which attacks the jurisdiction of the court upon the ground that the complaint is devoid of facts showing any matter which vests jurisdiction, goes rather to the sufficiency of the plead-

ing than to the jurisdiction of the court. Even if this objection had been sustained, the difficulty could have been easily obviated by amendment. We think, however, that it sufficiently appears that, if the city were allowed to erect and maintain competing water works, the value of those of the plaintiff company would be materially impaired, if not practically destroyed."

See also Iron Mountain R. Co. *v.* City of Memphis, 37 C. C. A., 410, in which the opinion of the court was given by Judge Taft.

The jurisdiction of this court is then quite clear, I think, and I pass at once to the merits of the contention.

By way of preliminary observation it may be remarked that the erection of water works by a municipal corporation in this State for the purpose of supplying itself and the inhabitants of the city within the corporate limits with water is one of the ordinary powers of a municipal corporation, and needs no enabling act to authorize the exercise of such a power.

City of Memphis *v.* The Memphis Water Co., 5 Heisk., 495.
City of Cleveland *v.* United States, 49 C. C. A., 383.

And such seems to be the rule in Louisiana.

Lake Charles Ice, Light & Waterworks Co. *v.* Lake Charles, 106 La. 65; S. C. 30, So. 289, and in Wisconsin also; Ellenwood, *et al. v.* The City of Reedsburg, *et al.* 91 Wis. 131.

In other jurisdictions such power is not regarded as one of the ordinary or implied powers of a city.

143 1 Farnham on Waters and Water Rights, sec. 146–150, and cases cited.

The proposition that the erection of water works to supply a city and its inhabitants with water is one of the ordinary powers of a municipal corporation was not in the form of stating the proposition in City of Memphis *v.* The Memphis Water Co., 5 Heisk., 495, extended beyond the erection and operation of water works by the city itself, and I do not understand that the plaintiff's contention is that under this ordinary or implied power the city would be authorized to contract with public service companies or corporations for a supply of water by the erection and operation on the streets of the city of a water works system, in the absence of express legislative authority, and I do not understand that it is insisted that this ordinary power of the city to erect and operate a water works system for the purpose of supplying the inhabitants of the city with water, as declared in The City of Memphis *v.* The Memphis Water Co., would enable the city, by contract or ordinance, to grant the right and privilege of furnishing a water supply in favor of third persons or public service corporations, or to make such right and privilege exclusive, in the absence of express legislative authority.

In this view it does not seem necessary to make further reference to the case of City of Memphis *v.* The Memphis Water Co., for the purpose of the particular question here presented for determination.

In view of the general proposition that a municipal corporation can exercise only such powers as are expressly granted in its charter, or a general law, and those necessarily implied as incident to the power expressly granted, it is plainly evident that the construction of a water plant by the issuance of bonds, and the execu-
144 tion in detail of the scheme under which the defendant city is now acting, can only be done by an enabling act of the legislature, and the city must be regarded as exercising the powers conferred upon it by the enabling act of 1903, and not otherwise.

As the statute under which the city is proceeding is directly attacked in the bill as not constitutionally passed, and therefore invalid, it would seem to be in logical order to dispose of this question first, for if this objection is well founded it would fully dispose of the case as now presented, and the discussion or determination of other points which arise would not now be necessary.

The act of 1903 having been regularly and duly printed and published as a statute of the State, the presumption is that it was duly and constitutionally passed, and the burden of showing the contrary is on the party attacking the legislation in this regard.

Upon examination of the journals of the senate and house the bill which resulted in the act of 1903 appears to have been regularly passed in all respects, except a single defect which appears on the Senate Journal at pages 550 and 551. The number of this bill (257) is exactly the same on both pages of the Senate Journal, but this bill, together with a series of others passed at the same time, were referred to on Senate Journal, page 550, as *senate bills*, while in the second entry of the same series of bills, page 551, they are designated in the announcement of the speaker's signature as *house bills*, while they were in fact senate bills, and should have been so noted and described.

But as the number of the bill, taken in connection with the series of other senate bills found on these pages, identifies it as being the same bill which is referred to as senate bill No. 257 on page 550, I think the discrepancy or defect is manifestly a mere clerical error
145 in noting and describing the bill as *house bill*, when it should have been *senate bill*, and that the bill is sufficiently identified by number, and the connection in which it appears in relation to other bills on the two pages referred to, and by examinations of the journals elsewhere.

This being so it appears that the bill was constitutionally and validly passed.

It is the duty of the courts to uphold the legislation as constitutionally and validly passed by disregarding a mere clerical mistake or omission, when sufficient evidence is found on the face of the journal to show that the defect is one of mere clerical mistake or omission.

This conclusion that the act of 1903 was constitutionally passed makes it necessary to dispose of the remaining issues in the case.

In the first place if the city in the contract which it made with

the complainant company had expressly contracted against the erection and operation of water works on its own account during the period of the 30 year limit of this contract; or, stated differently, if the city had stipulated that the use of its streets for water works purposes should be exclusively in the complainant company for the period of 30 years, such a contract on its part would not have constituted a perpetuity or monopoly, within the meaning of the constitution of this State under the cases already cited of City of Memphis *v.* The Memphis Water Co., City of Cleveland *v.* United States, and also the case of Citizens' Street Railway *v.* Detroit Railway, 171 U. S. 48.

This view, however, would have left the difficulty that the city of Knoxville is without the power by contract in form, or by grant in an ordinance, to vest in the complainant company the ex-
146 clusive privilege or franchise of using the streets and alleys of the city for the construction and operation of a water works plant. It could only have done so under an express grant from the legislature of the power to do so, and it could not exercise such a power by implication.

Westerly Water Works *v.* Westerly, 80 F. R. 611.

Kirkwood *v.* Meramec Highlands Co., 94 Mo. App. 637; S. C. 68 S. W. Rep. 761.

Syracuse Water Co. *v.* Syracuse, 116 N. Y. 167.

McQuillin on Municipal Ordinances, sec. 190–191, and cases collated.

3 Cook on Corporations, sec. 931, p. 2761, and cases.

Illinois Trust & Sav. Bank *v.* Arkansas City Water Co., 67 F. R. 196.

I conclude that if the city of Knoxville had expressly inserted in the contract a stipulation that it would not itself during the contract with the complainant company erect and operate a water works plant, and further that it would not contract with or grant the right to others to do so, and had attempted in that way expressly to make the rights granted to the complainant company exclusive, that such a particular stipulation in the contract would have been invalid for want of legislative authority to do so, and not because there would have existed constitutional objection to such a provision.

This proposition is one in regard to which the cases are divided, but it has the support of the weight of authority, and the more recent cases in which the point has been in judgment make no distinction in this respect, in regard to whether the city is acting by contract in the ordinary form, or by ordinance in the form of a grant.

The weight of authority is that in such a matter the city is
147 exercising its governmental or legislative power as contra-distinguished from its proprietary or administrative power, and in view of all that is said in the case of Walla Walla Water Co. *v.* Walla Walla, 172 U. S. 1, it is doubtful if that distinction is

material or important in a case like the one at bar, and the questions here involved.

The rule which denies to a municipal corporation the power, by contract or by ordinance, to confer upon public service corporations the exclusive use of the streets and alleys of the city, even for a limited number of years, in the absence of express legislative authority to do so, is a rule of strict construction in regard to the powers of such corporations, and the question of power depends upon the subject matter of the contract or ordinance, and not upon the mode in which the *exclusive privilege* is conferred as being in the form of a contract or ordinance.

The rule of strict construction is applicable when the municipal corporation is dealing with the uses of an easements in the streets and alleys which it holds in trust for the public, regardless of whether it is dealing with the subject by contract or by a franchise ordinance, when it may enact such ordinance under deligated authority from the legislature.

It is very true in this State that a public service corporation like the complainant must and does obtain its corporate franchises from the State, and that it deals by contract with the municipal corporation in obtaining the permission of such corporation to the use and occupation of the streets, with the terms and conditions upon which it may do so.

But, as already stated, I do not conceive that it makes any difference in the rule of strict construction when the contract relates to rights and privileges in the use of the streets.

148 I conclude that when the legislature of the State has not in the franchise grant made the use and occupation of the streets exclusive for a term of years, nor expressly authorized the municipal corporation to do so, that the latter is without authority to do so, and that an express provision to that effect inserted in its contract would be invalid.

In the ordinary case of a contract between individuals like the one here between the city and complainant I might be strongly disposed to hold that the city had contracted by necessary implication not to erect and maintain water works on its own account during the running of the contract with complainant; that is for the 30 year period. No other reasonable or just interpretation could be put upon this contract, in the light of the circumstances under which it was made.

The city had at that time been in a proper way considering the question of building a water works plant of its own, and had made certain preparations for that purpose by securing suitable parcels of land, or real estate.

In its contract with this complainant the complainant was required to take and pay for that property, and it was accordingly conveyed to it, which obviously could signify nothing else than an intention on the part of the city at that time to abandon its own

plan of erecting or maintaining water works, in view of the contract made with the complainant.

To induce the complainant to expend its money and engage in the enterprise of furnishing the city and its inhabitants needed water, the city undertook expressly to protect the complainant in the enjoyment of its rights by a term or provision in the contract that it would not grant a similar right to any other person or corporation during the life of the contract. This desire to induce the investment of the capital and the purchase from the city of the real estate previously secured for the purpose of the plant, would
149 obviously fail to afford protection if the city should itself, during the same period, erect and operate a water works plant of its own, and in that way come in direct competition with the complainant.

It is hardly to be doubted that it was understood by both parties that the city would not itself engage in such an enterprise and in that way enter into direct competition with the complainant company during the contract. Such a view would, in effect, be no more than to require on the part of the city that it would act in good faith in relation to the contract with the complainant. Or, to state the proposition in the very language of the Supreme Court of the United States in Walla Walla Water Co. *v.* Walla Walla, 172 U. S. 1:

"As such competition would be almost necessarily ruinous to the company, it was little more than an agreement that the city would carry out the contract in good faith."

"An agreement of this kind was a natural incident to the main purpose of the contract, to the power given to the city by its charter to provide a sufficient supply of water, and to grant the right to use the streets of the city for the purpose of laying water pipes to any persons or association of persons for a term not exceeding twenty-five years."

In Tyrone Gas & Water Co. *v.* Tyrone, 195 Penn. 566, it was declared by the court that competition, especially on the part of a municipality, is a virtual confiscation of property.

As between two individuals such an interpretation of this contract would be justly and fairly permissible.

While this is so, and while such a construction might be the result of a contract between individuals, there is a rule well settled by the cases, and growing largely out of public policy and the danger of abuse, which, in the case of a municipal corporation and its contracts in the interest of the public with private corporations or individuals, denies such an interpretation by implication as would cut off the city's right to operate and maintain a water works plant
150 of its own in the interest of the city and its inhabitants, if it should choose to do so.

If the city of Knoxville was without legislative authority or power by contract to make easements and privileges in the streets and alleys of the city exclusive by express stipulation or grant, it is hardly necessary to say that such an exclusive privilege or right cannot

arise by implication, for it may be stated as a general rule that the law never implies a contract or a term or provision in a contract where none could have been expressly entered into by the parties. 20 A. & E. Encycl. of L., 2 ed., p. 1158, and cases in note.

The rule of strict construction in regard to the powers of a municipal corporation, and which denies to such corporation the power by implication, by contract, or otherwise, to confer on third persons or public service corporations exclusive easements and rights in the uses of the streets has been declared in many cases, but it is not deemed necessary to refer to any considerable number of such cases. The general rule was declared in this State in Memphis *v.* Memphis Water Company, 8 Baxter, 589. In Railroad Co. *v.* Memphis, 3 Shannon's Tenn. Cases, 193, it was decided by the supreme court of this State that a municipal corporation is without power, in the absence of express legislative sanction or authority, to enter into a binding contract with individuals or private associations for the exclusive use and operation of street railways on and over the streets of the city. Among decisions of the Supreme Court of the United States the following may be referred to upon the subject:—

Joplin *v.* Light Co., 191 U. S. 150.
Walla Walla Water Co. *v.* Walla Walla, 172 U. S. 1.
Freeport Water Co. *v.* Freeport City, 180 U. S. 587.
Long Island Water Supply Co. *v.* Brooklyn, 166 U. S. 685.
Skaneateles Water Works Co. *v.* Skaneateles, 184 U. S. 354.

151 In Skaneateles Water Works Co. *v.* Skaneateles, *supra*, the Supreme Court of the United States, by Mr. Justice Peckham, said:—

"There is no implied contract in an ordinary grant of a franchise, such as this, that the grantor will never do any act by which the value of the franchise granted may in the future be reduced. Such a contract would be altogether too far reaching and important in its possible consequences in the way of limitation of the powers of a municipality, even in matters not immediately connected with water, to be left to implication. We think none such arises from the facts detailed."

In Walla Walla Water Co. *v.* Walla Walla, *supra*, the city had acted under express legislative authority, and strictly within the limits of such authority in making a contract against the erection or operation of water works itself during the period of the contract, but the contract or grant did not undertake to deny the right to the city to grant similar easements in the streets to other persons, or public service corporations, and no attempt was made in the contract to make the grant exclusive as against a similar grant to other public service corporations or persons, and in regard to such a contract Mr. Justice Brown said:

"Had the privielge granted been an exclusive one, the contract might be considered objectionable upon the ground that it created

a monopoly without an express sanction of the legislature to that effect."

The reason for the rule of strict interpretation which denies to a municipal corporation the power by implication to vest exclusive rights or privileges in the streets or public service corporations is stated in a recent work on the subject as follows:

"Exclusive franchises in the nature of monopolies are not only presumed to be against public policy because prejudicial to the public welfare, but the granting of them may have the effect, or at least a tendency, to impede or hamper the city in effectually executing its municipal functions, and if this results, all such grants would be void. While it is a settled maxim of the law that municipal corporations cannot grant a perpetual franchise, or exclusive privilege constituting a monopoly which will enable the grantee at some future time to take advantage of the necessities of the people by fixing exorbitant and oppressive rates, the view taken by the courts is that the circumstances of each case must largely determine the nature and effect of such grant. 'Courts of last resort have generally refrained from propounding an authoritative affirmative definition of the 'monopoly' so odious to the common law and the genius of a free government. It would try the power of ex-
152 pression of most judges, if not human speech, to frame such a definition outside of which the grant or contract must wholly and clearly rest to escape the stroke of nullity. It has, therefore, been generally deemed wise and safe to use rather the process of exclusion, and determine what is not a monopoly so far as the case in hand required.'"

McQuillin on Municipal Ordinances, sec. 190, and cases in the notes.

It is not to be denied that practically this strict rule of interpretation may work hardship in a given case, but it is a rule which operates in the public interest and is based on grounds of public policy, and it is not to be doubted that in the main the rule operates beneficially in the protection of the public interest by keeping municipal corporations free from unwise or hasty contract limitation against their doing at any given time what the very best public interest may at that time demand.

In view of what is said I reach the conclusion that the attempt on the part of the defendant city to establish and operate a water works plant of its own is not in violation of the vested contract rights of the complainant, and that the contention in this regard is not supported by the weight of authority, although it does have the support of highly respectable authority.

Apart from the question of the jurisdiction of this court, which I do not regard as seriously doubtful, the case, taken as a whole, on all points, is somewhat close and difficult.

The refusal of a preliminary writ of injunction at this stage of the case, it is to be borne in mind, does not authorize anything to

be done. The effect is only to permit the city to proceed at its peril, and in the event steps shall be taken, or contracts made (unless conditionally) in advance of a final determination of the case on review, the allowance of a final injunction at the end of the litigation might, of course, produce embar-assment.

153 It results from the conclusions at which I have arrived that the demurrer in the first ground assigned is over-ruled, and in the second and third grounds sustained, and the bill dismissed, and of course the restraining order is dissolved and the injunction denied.

And it is so ordered.

(Signed) CLARK, Judge.

Endorsed: No. 1382. In the U. S. circuit court at Knoxville. Knoxville Water Co. against Mayor & Aldermen of Knoxville, *et al.* Opinion dismissing bill, &c. Filed Oct. 8, 1904, at 8:05 a. m. J. T. Carter, deputy clerk.

FRIDAY, October 21st, 1904.

Court met pursuant to adjournment.

Present and presiding, the Honorable C. D. Clark, judge, &c.

KNOXVILLE WATER COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF KNOXVILLE ET AL. } No. 1382.

Be it remembered that this cause was heard on this 21st day of October, 1904, before the Hon. C. D. Clark, judge, upon the entire record in the cause, but more especially upon the motion of complainant for an injunction against the defendants as prayed

154 for in the bill, and at the same time the demurrer to the bill, filed by the defendants on the 20th day of September, 1904, and which was set down for argument by complainant, and the court, having heard oral argument of counsel for both complainant and defendants, upon both the motion of complainant for an injunction and the demurrer of defendants to the bill, and having given full consideration to the entire matter is of opinion that complainant is not entitled to the injunction sought, its motion therefor is not well founded and the same is overruled.

The court is further of opinion that the first ground of demurrer interposed by the defendants, is not well founded in law and the same is overruled.

The court is further of opinion that the remaining grounds of demurrer interposed by defendants to complainant's bill are well founded and they are accordingly sustained.

It is therefore ordered, adjudged and decreed by the court that complainant's motion for an injunction be, and the same is hereby, overruled and disallowed, and the restraining order or temporary injunction, heretofore granted in the cause in favor of the complainant and as against defendants, is dissolved and discharged.

It is further ordered, adjudged and decreed by the court that the first ground of demurrer interposed by defendants to complainant's bill be, and the same is hereby overruled, and that the remaining grounds of demurrer interposed by defendants to complainant's bill, be, and they are hereby, sustained, and the bill is accordingly dismissed.

The complainant and United States Fidelity & Guaranty Co. surety, upon its prosecution bond will pay all the costs of the cause, for which execution is awarded.

The court handed down a written opinion, which is ordered
155 filed and is made a part of the record in the cause.

Enter this.

(Signed) CLARK, Judge.

Petition for Appeal.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

KNOXVILLE WATER COMPANY, Plaintiff,
vs.
MAYOR & ALDERMEN OF THE CITY OF Knoxville and W. L. Russell, F. J. Callan, E. G. Oates, J. Allen Smith, and J. Y. Johnston, Defendants. } No. 1382. In Equity.

Petition for Appeal to the Supreme Court of the United States.

The above named plaintiff, Knoxville Water Company, conceiving itself aggrieved by the final decree made and entered on the 21st day of October, 1904, in the above entitled cause, does hereby pray an appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

SHIELDS, CATES & MOUNTCASTLE,
Solicitors for Plaintiff.

156 Dated this 21st. day of October, 1904.

The foregoing claim of appeal is allowed on this 21st. day of October, 1904.

(Signed) C. D. CLARK, Judge.

Endorsed: No. 1382. Knoxville Water Co. *vs.* Mayor & Aldermen of the City of Knoxville, *et al.* Petition for appeal. Filed Oct. 21, 1904, J. T. Carter, deputy clerk.

Assignment of Errors.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

KNOXVILLE WATER COMPANY, Plaintiff,
vs.
MAYOR & ALDERMEN OF CITY OF KNOXville and W. L. Russell, F. J. Callan, E. G. Oates, J. Allen Smith, and J. Y. Johnston, Defendants. } No. 1382. In Equity.

Comes now, plaintiff, Knoxville Water Company by its attorneys, Samuel G. Shields, Charles T. Cates, Jr., and R. E. L. Mountcastle, and prays an appeal from the final decree of this court, rendered in the above entitled cause, on the 21st. day of October, 1904, to the Supreme Court of the United States and assigns for error:

First. That the act of the General Assembly of the State of Tennessee, passed March 31, 1903, approved by the governor of
157 said State on April 3, 1903, and known as chapter 153 of the Session Acts of said General Assembly of the Year 1903, a copy of which is filed as Exhibit No. 10 to the bill in this cause, is in contravention of the Constitution of the United States, and especially of section 10, article 1 of said Constitution and section 1 of the 14th. amendment to said Constitution.

Second. That said act of the General Assembly of the State of Tennessee and the acts and doings thereunder by the defendant, Mayor and Aldermen of the City of Knoxville, and the other defendants constituting the Board of Water Works Commissioners of the City of Knoxville, and especially the election held by the defendant Mayor and Aldermen of the City of Knoxville for the purpose of determining whether it would issue bonds to build a system of water works in competition to the plant and property of plaintiff, Knoxville Water Company, the ordinance passed by defendant, Mayor and Aldermen of the City of Knoxville declaring the result of saif election to authorize the issuance of said bonds and the purpose of defendants to build and construct a system of water works to be run and operated in competition with the plant and property of the plaintiff, Knoxville Water Company—all as set out in the bill in this cause—are in contravention of the Constitution of the United States, article 1, section 10, and section 1 of the 14th. amendment to said Constitution, in that, thereby, are impaired the charter rights and franchises vested in plaintiff, Knoxville Water Company, and the obligations of the contract made and entered into by plaintiff, Knoxville Water Company, and defendant, Mayor and Aldermen of the City of Knoxville, on the first day of July, 1882, and the several amendments to said contract as set out in the bill in this cause;

and the obligations of the North Knoxville & West Knoxville
158 contracts, Exhibits Nos. 5 & 7 to the bill herein, and in that, thereby, plaintiff, Knoxville Water Company is deprived of its liberty and property without due process of law and denied the equal protection of the law.

Third. That said act of the General Assembly of the State of Tennessee is in contravention of the constitution of the State of Tennessee, and especially of sections 17–18 and 28 of article 2 of said constitution, as set out in the bill in this cause.

Fourth. The court erred in holding that the defendant Mayor and Aldermen of the City of Knoxville was without power to confer upon plaintiff, Knoxville Water Company, the exclusive right to furnish water to said defendant and its inhabitants during the period covered by said contract of July 1, 1882, that is, from the first day of July 1882 until the first day of August 1913.

Fifth. The court erred in holding that the defendant, Mayor and Aldermen of the City of Knoxville, did not by said contract of July 1, 1882, and the several amendments thereto, exhibited with and made a part of the bill in this cause, grant to and confer upon the plaintiff, Knoxville Water Company, the exclusive right to furnish water to said defendant and its inhabitants for and during the period covered by said contract.

Sixth. The court erred in not holding that the defendant, Mayor and Aldermen of the City of Knoxville, by said contract of July 1, 1882, and the several amendments thereto, all ratified and confirmed by the General Assembly of the State of Tennessee by an act passed January 29, 1903, and known as chapter 12 of the Session Acts of 1903, granted and conferred upon plaintiff, Knoxville Water Company, an exclusive franchise in the streets and public thoroughfares of said city and the exclusive right to furnish water to said
159 defendant city and its inhabitants for and during the period covered by said contract.

Seventh. The court erred in not holding that the defendant City of Knoxville by its several contracts with plaintiff water company and its dealings with said company, all as set out in the bill, estopped itself from building or attempting to build a system of water works to supply itself and its inhabitants with water during the life of said contract of July 1, 1882, that is, until August 1, 1913, and in not holding that said defendant city bound itself to carry out said contracts in good faith, and in accordance with the intention of both parties thereto, that is, that plaintiff water company should have the exclusive right to furnish water to defendant city and its inhabitants during the life of said contracts and until August 1, 1913.

Eighth. The court erred in failing to hold and decree that under and by virtue of its charter granted, had and obtained by the leave, consent and permission of defendant, Mayor and Aldermen of the City of Knoxville, and under and by virtue of its several contracts with said defendant, as set out in the bill, the plaintiff, Knoxville Water Company, has an exclusive right to furnish defendant city

and its inhabitants with water, for public, sanitary and domestic purposes until the first day of August 1913.

Ninth. The court erred in holding that the attempt on the part of defendant city, as set out in the bill, to establish and operate a water works plant of its own in competition with the plant and property of plaintiff, Knoxville Water Company, is not in violation of the vested charter and contract rights of plaintiff.

Tenth. The court erred in failing to hold and decree that the defendants had failed to comply with the plain terms of said
160 chapter 153 of the Acts of the General Assembly of Tennessee for the Year 1913, in that there *was* not submitted to the city council of defendant city for its consideration, plans, specifications and estimates of the cost and construction of a new system of water works, accompanied by a written opinion of a competent and disinterested expert as to the cost and present value of the plant and property of plaintiff, Knoxville Water Company; and, further, in that the defendant city through defendant water commissioners having secured from plaintiff a written proposition covering the sale of its plant, franchises, etc. under and in accordance with the aforesaid contract of July 1, 1882, wholly failed and refused to submit to a vote of the legal voters of defendant city, the question whether the property of plaintiff should be purchased under and in accordance with the terms submitted in said written proposition and wholly failed to submit to a vote of the legal voters of defendant city the question whether bonds should be issued for the purchase of the plant, franchises and property of plaintiff, Knoxville Water Company.

Eleventh. The court erred in failing to hold that the election held by defendant city on July 9, 1904, as set out in the bill, was illegal and void for the reasons therein stated.

Twelfth. That the court erred in sustaining the 2nd. and 3rd. grounds of the demurrer to the bill and in dismissing the bill.

Thirteenth. The court erred in refusing the motion for a temporary injunction, and in refusing to continue the restraining order pending the appeal.

Wherefore plaintiff prays that the decree of said circuit court be reversed.

SHIELDS, CATES & MOUNTCASLTE,
Solicitors for Plaintiff.

161 Endorsed: No. 1382. Knoxville Water Co. *vs.* Mayor & Aldermen of the City of Knoxville, *et al.* Assignment of errors. Filed Oct. 21, 1904. J. T. Carter, deputy clerk.

Appeal Bond.

Bond of Appeal to Supreme Court of United States.

Know all men by these presents, that we, Knoxville Water Company, as principal, and S. G. Shields, R. E. L. Mountcastle and Charles T. Cates, Jr., as sureties, are held and firmly bound unto the Mayor and Aldermen of the City of Knoxville, and to W. L. Russell, F. J. Callan, E. G. Oates, J. Allen Smith and J. Y. Johnston, in the full and just sum of five hundred dollars, to be paid to said obligees, their certain attorneys, successors, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

This 21 day of October 1904.

Whereas, lately at a circuit court for the northern division of the eastern district of Tennessee, in a suit pending in said court, between said Knoxville Water Company, plaintiff, and said Mayor and Aldermen of the City of Knoxville, W. L. Russell, F. J. Callen, E. G. Oates, J. Allen Smith and J. Y. Johnston, defendants, a decree was rendered against said plaintiff, Knoxville Water Company, and the said Knoxville Water Company having obtained an appeal and filed a copy thereof in the clerk's office of said court to reverse the decree in the aforesaid suit and a citation directed to said Mayor and Aldermen of the City of Knoxville, W. L. Russell, F. J.
162 Callen, E. G. Oates, J. Allen Smith and J. Y. Johnston, citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington on the 20th. day of November, 1904.

Now, the condition of the above obligation is such, that if said Knoxville Water Company shall prosecute its appeal to effect, and answer all damages and cost if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

In testimony whereof, we do hereunto sign our names and set our seals on the day and date first above written.

KNOXVILLE WATER COMPANY,
By CHARLES T. CATES, JR., Attorney.
SAM'L G. SHIELDS.
CHARLES T. CATES, JR.
R. E. L. MOUNTCASTLE.

This bond is approved.

C. D. CLARK, Judge.

Endorsed: No. 1382. Knoxville Water Co. *vs.* Mayor & Aldermen of the City of Knoxville, *et al.* Appeal bond. Filed Oct. 21, 1904. J. T. Carter, deputy clerk.

KNOXVILLE WATER COMPANY, Plaintiff,
vs.
MAYOR & ALDERMEN OF THE CITY OF KNOXVILLE, W. L. Russell, F. J. Callen, E. G. Oates, J. Allen Smith, & J. Y. Johnston, Defendants. } # 1382.

163 Now comes the Knoxville Water Company, plaintiff in the above entitled cause, and files its assignment of errors, and its prayer for an appeal from the final decree herein to the Supreme Court of the United States at Washington, and for reasons satisfactory to the court appearing, said appeal is hereby granted and allowed, and a transcript of the record, proceedings and papers upon which said final decree was made, duly authenticated is hereby ordered to be sent to the Supreme Court of the United States as prayed in the petition for appeal. This Oct. 21st, 1904.

Enter this,

(Signed) CLARK, J.

Opinion Overruling Motion to Continue Restraining Order Pending Appeal.

KNOXVILLE WATER CO.
vs.
MAYOR & ALDERMEN OF THE CITY OF KNOXVILLE.

Conceding (but not deciding) that in a case like this the court might continue the restraining order or maintain an injunction during the appeal allowed I conclude in view of the inconvenience and embarrassment which may result to the defendant as contrasted with any injury which can, within that time, happen to plaintiff, that I should deny the motion of the plaintiff for an order continuing the restraining order pending the appeal.

This leaves open to plaintiff such remedy (if any) as may
164 be available before the Supreme Court or a justice of that court.

(Signed) CLARK, J.

Endorsed: No. 1382. In the U. S. circuit court at Knoxville. Knoxville Water Co. against Mayor & Amdermen of the City of Knoxville, *et al.* Opinion overruling motion to continue restraining order pending appeal. Filed Oct. 21, 1904, J. T. Carter, deputy clerk.

KNOXVILLE WATER CO.
vs.
MAYOR & ALDERMEN OF THE CITY OF KNOXVILLE ET AL. } No. 1382.

This cause came on to be further heard on this October 21st. 1904, upon the motion of plaintiff in connection with the appeal for an

order to continue, pending the appeal, the restraining order heretofore allowed or for injunction pending the appeal and upon due consideration thereof it is ordered that the motion in that behalf be overruled and denied to which the plaintiff excepts.

Enter this,

(Signed) CLARK, J.

165 The Supreme Court of the United States.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Mayor and Aldermen of the City of Knoxville, W. L. Russell, F. J. Callen, E. G. Oates, J. Allen Smith, and J. Y. Johnston, Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington within thirty days from the date of this writ, pursuant to an appeal, duly allowed by the circuit court for the northern division of the eastern district of Tennessee, and filed in the clerk's office in said court on the 21st day of October 1904, in a case wherein The Knoxville Water Company is appellant, and you are appellees, to show cause, if any, why the decree rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to said Knoxville Water Company in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 21 day of October, 1904.

C. D. CLARK, Judge.

Service of a copy of the within citation is hereby admitted this 21 day of October, 1904.

JNO. W. GREEN,
J. W. CULTON,
R. H. SANSOM,
Attorneys for Appellees.

165½ UNITED STATES OF AMERICA, Eastern District of Tennessee, } *ss:*

I, Henry O. Ewing, clerk of the circuit court of the United States for the eastern district of Tennessee, do hereby certify that the foregoing one hundred and sixty four (164) pages of typewritten matter, contain a full, true and perfect transcript of the record and proceedings had in said court in the cause of Knoxville Water Company *vs.* The Mayor and Aldermen of the City of Knoxville, *et al.*, No. 1382, as the same appear of record and on file in my office, together with the original citation in said cause.

Witness my hand and the seal of said court at office in Knoxville, Tennessee, this 1st. day of November, 1904.

[The Seal of the Circuit Court, District of East Tenn.]

HENRY O. EWING, Clerk,
By J. T. CARTER,
Deputy Clerk.

Endorsed on cover: File No. 19,533. E. Tennessee C. C. U. S. Term No. 123. Knoxville Water Company, appellant, *vs.* The Mayor and Aldermen of the City of Knoxville *et al.* Filed November 17", 1904. File No. 19,533.

FILE COPY.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1905.

Office Supreme Court U. S.
FILED
DEC 8 1905
JAMES H. McKENNEY,
Clerk.

KNOXVILLE WATER COMPANY,
Appellant,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF KNOXVILLE ET. AL.,
Appellees.

No. 123

BRIEF AND ARGUMENT FOR APPELLANT.

SAMUEL G. SHIELDS,
R. E. L. MOUNTCASTLE,
Of Counsel.

CHARLES T. CATES, JR.,
Solicitor.

S. B. NEWMAN & CO., KNOXVILLE.